

Union-Tribune Publishing Co. and San Diego Newspaper Guild, Local No. 95, the Newspaper Guild, AFL-CIO, CLC. Case 21-CA-26318

April 9, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On April 17, 1991, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondent's exceptions. The General Counsel also filed limited exceptions and a supporting brief, and the Respondent filed an answering brief to the limited exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order as modified.³

¹The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

²The General Counsel has excepted to the judge's finding that the complaint did not allege, nor did the General Counsel maintain at any time during the hearing, that Nancy Tetrault's 1-day suspension on September 22, 1988, was discriminatorily motivated. The General Counsel contends in his brief in support of exceptions that the September 22, 1988 suspension was part of an overall pattern of discrimination exhibited by the Respondent, which led to the November 1988 suspension and discharge of Nancy Tetrault. At no time during the hearing, however, was there a clear statement from the General Counsel that he was alleging that the September suspension of Nancy Tetrault constituted a separate violation of Sec. 8(a)(3) of the Act. It cannot reasonably be said, therefore, that the Respondent was presented with an opportunity to litigate the circumstances surrounding, or the legal effect of, the September suspension. Thus, the matter was not fully and fairly litigated. Our finding a violation at this late date would deprive the Respondent of the right to reasonable notice of the allegation of wrongdoing and would constitute a denial of due process. See *Maintenance Service Corp.*, 275 NLRB 1422, 1425-1426 (1985). Accordingly, we find the General Counsel's limited exceptions without merit.

³The Respondent has excepted to the judge's recommended Order, which requires the Respondent to reinstate Nancy Tetrault to her former position as district manager of district 122. The Respondent asserts that under Board law the judge should have ordered Tetrault's reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position. We agree with the Respondent and shall modify the recommended Order accordingly.

Additionally, the expunction provision of the judge's recommended Order inadvertently failed to include the dates of Nancy

1. The Respondent has excepted to the judge's conclusion that it violated Section 8(a)(3) and (1) of the Act in its November 1988 suspension and discharge of Nancy Tetrault. In so doing, the Respondent asserts, inter alia, that there was no direct evidence supporting the judge's inference that the Respondent harbored animus against Tetrault.

In finding that the Respondent discriminatorily discharged Tetrault, the judge found, inter alia, that the reasons for the discharge were pretextual. Thus, he concluded that the Respondent's pretext evidenced its discriminatory motive which in turn resulted in the discharge of Tetrault.

The Respondent contends that the judge incorrectly bootstrapped his finding that the Respondent's reasons for the termination of Tetrault were pretextual into a conclusion that the Respondent's pretext established union animus. Contrary to the Respondent's contention, we find that the record as a whole sufficiently supports the judge's inference of union animus. *Fluor Daniel, Inc.*, 304 NLRB 970 (1991); *Asociacion Hospital Del Maestro*, 291 NLRB 198, 204 (1988).

In support of his findings, the judge noted the following factors: the Respondent's division manager, Wesley Bates, communicating to Tetrault while she was on the bargaining committee and during negotiations that "the union shop was out and it would not exist at the end of negotiations"; the holding of a meeting by the Respondent so its managers could watch the videotape broadcast on cable of Tetrault delivering a speech to Guild members, in which she chastises the Respondent and the law firm representing the Respondent;⁴ the Respondent's coastal circulation manager, Richard Julian, communicating to Tetrault that her choice to resign from the bargaining committee was a sign to him that she had gotten her priorities straight; the relationship of the parties being at a 40-year low, which was readily discernible from the videotape mentioned above, and the Union's filing of an 8(a)(5) charge against the Respondent alleging bad-faith bargaining. Based on the foregoing factors, as well as the judge's finding that the Respondent asserted reasons for its actions were pretextual, we conclude that the judge's inference of antiunion animus was well supported by the surrounding circumstances.

Tetrault's unlawful suspension and discharge, or to include a notification provision. We have modified the recommended Order to reflect that both the suspension and discharge found unlawful by the judge occurred in November 1988, and to add a notification provision.

⁴In relying on this factor, we do not suggest that whenever an employee makes a remark disparaging his or her employer, and the employer learns of the remark, we will necessarily infer that any subsequent action taken against that employee by the employer is infected by animus. The Respondent's knowledge of Tetrault's speech is only one of many circumstances that support the judge's inference of antiunion animus in this case.

2. In finding that the Respondent's November suspension and discharge of Tetrault were unlawfully motivated, the judge relied on the Respondent's repeated refusals to provide Tetrault with the information on which it purportedly based those actions. Although we agree with the judge's finding of a violation, we agree with the Respondent that the judge improperly relied on the denial of information in inferring that the Respondent acted out of improper motive.

In August and September, charges had been filed alleging that the Respondent has discriminated against Tetrault in violation of Section 8(a)(3);⁵ those charges were still pending in November when Tetrault was suspended and then terminated. When Tetrault asked the Respondent for information relating to her suspension and discharge, the Respondent refused, citing the pending charges. As we have noted, the judge found the suspension and discharge to have been unlawfully motivated, in part because of the Respondent's refusal to confront Tetrault with the requested information. Although such an inference normally would be justified, we find that it was improper in the circumstances of this case.

It is well established that the Board's procedures do not include prehearing discovery. Accordingly, when information is sought that relates to a pending 8(a)(3) charge, the Board generally will not find that a refusal to provide that information violates Section 8(a)(5). Any other rule would, in effect, impose a discovery requirement where none otherwise exists. See, e.g., *WXON-TV*, 289 NLRB 615, 617, 618 (1988). Although there is no 8(a)(5) allegation here, we find that the same considerations apply in this case as in the 8(a)(5) context. Thus, the usual rule is that an employer faced with a pending 8(a)(3) charge may legitimately decline to furnish information that may relate to the charge prior to the hearing.⁶ It follows that an employer who declines to provide information on that basis, as the Respondent did, has a valid motive for doing so. In those circumstances, it is improper to infer, from the denial of information alone, that the employer has acted from an *improper* motive. Consequently, in affirming the judge's finding that the Respondent's actions against Tetrault were unlawfully motivated, we do not rely, as the judge did, on the Respondent's refusal to provide the requested information.

⁵The judge erroneously stated that the charges alleged only bad-faith bargaining.

⁶It is immaterial that the charges were filed before the November suspension and discharge, because the November actions were closely related to the subject matter of the earlier charges. Thus, at the time the Respondent denied the requested information, it could reasonably have believed that its November actions might become the subject of a Board complaint. See *NLRB v. Fant Milling*, 360 U.S. 301 (1959).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Union-Tribune Publishing Co., San Diego, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

“(a) Offer Nancy Tetrault immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of the judge's decision.”

2. Substitute the following for paragraph 2(b).

“(b) Expunge from its files any references to the November 1 and 17, 1988 suspension and discharge of Nancy Tetrault and notify her in writing that this has been done, and that the suspension and discharge will not be used against her in any way.”

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by the provisions of this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT suspend or discharge employees for their activity on behalf of San Diego Newspaper Guild, Local No. 95, the Newspaper Guild, AFL-CIO, CLC, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Nancy Tetrault immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position without prejudice to her seniority or any other rights or privi-

leges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits resulting from her suspension and discharge, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the November 1 and 17, 1988 suspension and discharge of Nancy Tetrault, and WE WILL notify her in writing that this has been done and that the suspension and discharge will not be used against her in any way.

UNION-TRIBUNE PUBLISHING CO.

Robert R. Petering, Esq., for the General Counsel.

Howard M. Kastrinsky, Paul Duvall, and Mark E. Hunt, Esqs. (King & Ballow), of Nashville, Tennessee, for the Respondent.

Richard D. Prochazka, Esq. (Prochazka, McGrath & Cortes), of San Diego, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Judge. Pursuant to notice, a hearing in this matter was held before me in San Diego, California. The hearing commenced on September 26, 1989, and concluded on September 14, 1990. There were 44 days of testimony, 5581 pages of transcript, and over 480 multipage exhibits presented during the hearing.

The initial charge was filed on August 12, 1988, by the San Diego Newspaper Guild, Local No. 95, Chartered by The Newspaper Guild, AFL-CIO, CLC (the Guild or the Union). The charge was amended on September 27, and again on December 12, 1988. Thereafter, on June 26, 1989, the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging violations by the Union-Tribune Publishing Co. (the Respondent or the Company) of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act).

During the course of the hearing the parties entered into a collective-bargaining agreement. Thereupon, the Charging Party withdrew the 8(a)(5) portions of its charge, and the complaint was amended accordingly.

The parties were afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel and counsel for the Respondent.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a division of Copley Press, an Illinois corporation, with its main offices and plant facility located in San Diego, California, where it is engaged in the publication of two daily newspapers and one Sunday newspaper in San Diego County, California. In the course and conduct of its business operations, the Respondent derives gross annual revenues in excess of \$200,000, is a member of and sub-

scribes to interstate news services; publishes nationally syndicated features; advertises nationally sold products; and annually purchases goods valued in excess of \$50,000 which originate from points outside the State of California.

It is admitted, and I find, that at all times material the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that the Guild is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Issue

The principal issue in this proceeding is whether the Respondent, on November 1, 1988, indefinitely suspended and thereafter, on November 17, 1988, discharged Nancy Tetrault, a district manager in Respondent's circulation department, in violation of Section 8(a)(1) and (3) of the Act, because of her activities on behalf of the Guild.

B. The Facts

1. Background

Nancy Tetrault began working as a relief district manager in the Respondent's circulation department in January 1979. She progressed to the position of vacation relief district manager, and then to the position of district manager. She remained as district manager of District 104 for 3 or 4 years and, thereafter for approximately 2 years prior to her discharge, occupied the position of district manager of District 128. On September 23, 1988,¹ about a month prior to her suspension, she was transferred to District 122; and during the last month of her employment she was required to perform her duties as district manager of District 122, her new district, as well as complete the outstanding work remaining of District 128 prior to that district being designated as the official responsibility of another district manager, Steve Barrington.

The principal management representatives and/or supervisors involved in this matter, and their job titles and/or positions during the period material are as follows: Circulation Director Walter Mordock; Circulation Operations Manager Mike Redd; Coastal Circulation Manager Rich Julian; Division Manager Don Resch, Tetrault's immediate supervisor prior to Wesley Bates; Division Manager Wesley Bates, Tetrault's immediate District 128 supervisor at the time of her discharge; Inland Circulation Manager Jules Veuger; Union Press Supervisor Ray Witlock; and Employee Relations Representative Sherri Adams.

The principle employees and/or Guild representatives involved in this matter, in addition to Tetrault, are: Relief District Manager/District Manager Steve Barrington, Vacation Relief District Manager Glen Harms, and Guild Administrative Officer/District Manager Robert Kemp.

¹ All dates or time periods are within 1988 unless otherwise indicated.

2. The work of a district manager

District managers are responsible for the daily delivery of the newspaper within their respective districts. Simply stated, the district managers for the morning newspaper, the *San Diego Union* pick up the newspapers from the Respondent's loading area at about 3 a.m. each day and deliver the correct number of papers in a delivery van to various route carriers within the district. The route carriers are independent contractors hired by the district managers: they may be teenagers or adults. They, in turn, pick up the papers from designated pickup locations and deliver them to the subscribers on foot, bicycle, or auto. The district manager provides the carriers with collection receipts which show how much each subscriber owes, together with a "paper bill" which denotes the monthly wholesale cost of the newspapers to the carrier. The carrier then collects the appropriate amount of money from the subscriber; giving the subscriber a receipt stub; pays the paper bill by giving the district manager sufficient coins, currency, and checks collected from subscribers to cover the paper bill amount, and keeps the remainder as his or her profit. The district manager places the paper bill proceeds in a canvas bag, together with a form called a "cash turn in" which designates the amount of money to be allocated to each route, and takes it to the Respondent's accounting window for deposit. Because the carriers collect from their customers over a period of days or weeks and may elect to turn the money over to the district managers as it is collected rather than in a lump sum, the district managers may submit a number of cash turn-ins for particular routes.

District managers handle large amounts of checks and cash each month. It was estimated that Tetrault was responsible for the handling and proper disbursement of over \$140,000 each year.

Carriers are required to be "contracted." Prior to contracting a carrier, the district manager meets with the carrier and, in the case of a teenager, his or her parent or guardian, and explains the duties and responsibilities of the work and the amount of profit the carrier may expect. Then a contract is signed and kept on file with the Respondent. To insure that the carrier will pay the paper bill, the carrier is required to post a designated amount of money called a "bond" with the Respondent. The carrier contributes to his bond account each month, and it in effect becomes a savings account for the carrier. The bond account may be "tapped" in whole or in part and applied to the amount a carrier may owe the Respondent for the paper bill in the event a carrier has failed to turn in sufficient funds to pay the paper bill.

The evidence shows that the degree of conformity to the foregoing model of the work of a district manager varies from district to district. Some districts do, in fact, operate in a manner consistent with the model. However, credible evidence makes it abundantly clear, and I find, that Tetrault's district was perhaps as difficult to manage as any district within the Respondent's circulation area, District 128, within the city of San Diego, is low income, crime and drug ridden, and has a significant transient population. In terms of the work of a district manager, this translates, in the first instance, into the relative difficulty of finding and contracting responsible carriers who will, for example, remain on the job for a reasonable length of time, or will provide the district manager with reasonable advance notice that they intend to quit because they are moving away from the area.

Further, the problems with carriers are compounded by the obvious fact that within a district such as District 128, door-to-door collections are more difficult to make. Whatever the problems within the district, and the scenarios are virtually endless, the district manager is accountable and is responsible for performing any necessary work that the carrier has failed to do. Thus, for example, the district manager must deliver a paper to "Mr. Jones" when his paper is on the roof, as well as throw an entire route of perhaps 100 papers when the carrier has simply disappeared or, in common parlance, "dumped" the route, sometimes absconding with money owing to the Respondent.

3. Tetrault's difficulties with District 128

Tetrault acknowledged that her district, which had approximately 22 routes, each with its own carrier, and a total daily paper count of approximately 2000 papers, was a "mess" in respect to the number and significance of the day-to-day problems that demanded her attention. As result she was having to work a considerable amount of overtime. She attributed the problems largely to the geographic area of the city within which her district was located. The Respondent attributed the problems to Tetrault's deficiencies as a district manager.

On June 23, at the end of the second quarter of 1988, Tetrault's immediate supervisor, Division Manager Don Resch, gave her a verbal performance evaluation along with a memo evaluating her job performance during the first quarter of 1988. Resch listed various performance statistics maintained by the Respondent for evaluating each district. For example, although the "minimum departmental standard" was 2.0 customer complaints per 1000 deliveries, and Tetrault, given the nature of her district, was allowed 4.0 complaints per 1000 papers delivered, Tetrault's actual service results for the first quarter of 1988 reflected 6.49 complaints per 1000 papers delivered. Resch's memo specifies the various performance objectives Tetrault is expected to achieve, and states:

Your carrier force must be thoroughly trained if they are to be successful. It is my feeling that your major failings are in the areas of communication, organization and follow-up. You do not demand performance from your carrier force and thereby their failings become yours.

In addition, I recommend your starting a program of retraining your present carriers.

Although no disciplinary action appears to have been taken against Tetrault up to that point, Resch notes that "Failure to improve your performance will result in *further* disciplinary action." (Emphasis added.)

During the performance evaluation Tetrault became upset and, according to Resch, began crying. She said that the evaluation was unfair, that she was being held responsible for things that were not in her control, that District 128 was a tough area, and that she was doing the best she could.

Up to this point, Tetrault, who was a member of the Guild's negotiating committee, had participated in a total of 17 negotiating sessions and Guild committee meetings since March 22, the date collective bargaining for a new agreement had commenced. Attendance at these meetings required that

she miss work. During her absences from work, which were excused under article XVIII, section 2, of the collective-bargaining agreement, her district was covered by other relief district managers.

As a result of the foregoing evaluation, and because work on the district was piling up due to her participation in the negotiations, she withdrew from the negotiating committee and no longer attended the bargaining sessions. Shortly thereafter, Rich Jullian, then Respondent's coastal circulation manager (and Resch's immediate supervisor), told Tetrault that he was glad to see that she had her priorities in the right place and that keeping her job was more important than the bargaining.

4. Tetrault's July 18 to August 10 vacation

Tetrault was scheduled to go on vacation from July 18 until August 10. She asked Union Press Supervisor Ray Whitlock to schedule an experienced vacation relief district manager in her absence. When she was later advised that her vacation relief would be Glen Harms, Tetrault expressed her misgivings to both Whitlock and Resch. She questioned Harms's ability to handle the district, and suggested that her regular relief district manager, Steve Barrington, who had been filling in for her 2 days a week during her regular days off and who was familiar with the district, be assigned to cover her vacation. Resch, who testified that prior to the commencement of Tetrault's vacation, he went to Julian to discuss whether the vacation should be canceled in view of the problems with the district, told Tetrault that he would try to stay on top of things, and told her to leave explicit instructions for Harms. Tetrault did so, leaving Harms with five pages of instructions, which she personally reviewed with Harms prior to commencing her vacation.

Steve Barrington continued to be the regular relief district manager for vacation Relief District Manager Harms during Tetrault's vacation. Thus he filled in for Harms on Harms' days off. Barrington testified that District 128 was a "very volatile" district and that he, too, expressed concern to Resch about the appointment of Harms as a substitute for Tetrault. Barrington stated that the reason he was concerned was because "it was a firecracker out there. The district was very rough, and the chances of me working a lot more with a vacation relief district manager 'Harms, who wasn't seasoned was my concern.'" Asked to explain what he meant by characterizing the district as "volatile" or "a firecracker," Barrington testified that:

The district could have a carrier quit at a moments notice. The district was like that quite a bit, I mean, the kids got discouraged with delivering the papers, with what they saw on the streets at night. They got discouraged with the collection problems. So, a route could go down at any time, you know, it wasn't uncommon to have two or three routes down at once along with having to go out and do the collections on [sic] there because the [sic] routes being down. So there was a lot of work involved with District 128.

Barrington testified that things became significantly worse during Tetrault's absence, largely due to the fact that, as Barrington explained:

The carriers that Nancy would put on would be decent carriers that would accomplish the jobs. The carriers that Glen Harms put on were less than desirable carriers, would need a lot of extra work to baby sit them and caused a lot of additional problems to the district. So, just in the fact of the type of carriers that he was putting on routes it caused more work to be done by the district [Tetrault] Had a knack for being able to weed out most of the bad carriers. There have been some that she put on that fooled everybody, but for the most part she put good carriers on.

According to Barrington, Harms hired three carriers during Tetrault's absence, namely, Michael Gregory, Gregory's daughter, and Michael Koby.

5. The television documentary

Tetrault returned from her vacation on August 10, 1988. Between the days of August 5 and 28, a television documentary produced by students at the University of California at San Diego (UCSD), entitled "The Non-Union Tribune" was cablecast by an entity called "Labor Link TV" and was aired a total of 10 times on four different cable TV channels. The promoters of the program distributed an information sheet giving a brief synopsis of the program together with the various channels and times of the scheduled cablecasts. The information sheet states:

Labor Link TV continues to cablecast on four cable TV stations in San Diego County. This month's program concerns The Newspaper Guild Local 95 and the Mailers Local M-75 and their problems with the Union Tribune. Their employer, Copley Press, has engaged a notorious union-busting law firm to "negotiate" the next contract.

The theme of the approximately half-hour program is that the Respondent is the archetype of the hypocritical employer that has no concern whatsoever for the welfare of its employees, but that portrays itself to the community as altruistic, dedicated, and concerned. The flavor of the program is musically expressed during its introduction and conclusion through lyrics entitled "The Company Say" and "Attack of the Company Lawyers." The format of the program consists of the juxtaposition of excerpts from a video, apparently produced as an advertising promotion by the Respondent, with various interviews and speeches of concerned officials, representatives, and Guild members and their families. Also, a photograph of the Respondent's lawyers is shown.

The Respondent's promotional video, incorporated within the UCSD program, portrays the Respondent, under the leadership of Helen Copley, publisher and chairman of the editorial board, as being at the forefront of newspaper publishing in terms of managerial ability, technology, and dedication to the community. It is a company with guiding principles such as "dignity, fairness, accuracy, and truth." As counterpoint, the photos, interviews, and speeches, repeatedly and by name, depict the Respondent and Helen Copley, and the law firm of King and Ballow and its chief negotiator, Michael Zinser, as opportunistic and selfish, with no concern for the on-the-job safety or the financial security of the Respondent's employees. A caption over the photo of following and Ballow attorneys describes them as "Tribune Union

Busters.” A union official states that Helen Copley, who is on Fortune Magazine’s list of the 500 wealthiest individuals, wants even more money by squeezing the very people who made her most of her fortune. King and Ballow is depicted as a management consultant law firm that is in business only to make money; that has “sold Copley a bill of goods” and has demanded that Copley, in effect, give King and Ballow carte blanche in dealing with the Guild; that doesn’t care if the Respondent or the union folds; and that has been trying to break up collective-bargaining units throughout the country for personal financial gain.

During one interview, Guild Administrative Officer Robert Kemp stated that a strike is in no one’s best interests, but that in the event collective bargaining fails, the Guild will destroy the Respondent.

A photo of a typewritten manual, depicted as a manual prepared by King and Ballow, which advises clients how to prepare for a strike, is quoted as containing instructions to employers to utilize as supervisors such people as former boy scouts and little league baseball coaches; to replace foremen who want to remain union members with those who don’t; and to hire and train young people as they make the best employees.

The theme of negotiations is also emphasized in the program. It is stated that no progress has been made after 22 bargaining sessions,² and that for the first time in the history of the parties’ collective-bargaining relationship the Respondent was attempting to take away what the employees had gained through years of contract negotiations. Particularly in the area of management rights, it is stated that the Respondent has continued to reserve for itself the absolute control and total flexibility to indiscriminately discharge employees, and was not willing to permit them any recourse to contractual grievance and arbitration machinery.

Regarding management in general, Respondent’s managers, collectively are characterized as “little boys” all taking care of each other, without regard for right or wrong, good or bad; and are interested only in how to help themselves and their buddies.

Near the conclusion of the program a young girl, the daughter of an employee of the Respondent, is standing by her father who asks whether his daughter should go without benefits because Helen Copley needs more money; and Attorney Zinser’s attempt to reserve to the Respondent complete managerial flexibility is compared to the outlawing of human rights in Poland.

Nancy Tetrault, as well as several other Guild representatives, played a prominent role in the program. About midway into the program, Tetrault is standing at a podium before what appears to be a large group of Guild members, and is delivering the following remarks which reflect Tetrault’s feelings, as a member of the Guild’s negotiating committee, toward the bargaining tactics of Attorney Zinser and the law firm offering and Ballow:

I tell you, he really ticked me off when he started talking about people that work at the Union-Tribune as self-serving individuals who only care about themselves and, you know, that really made me a more dedicated Guild member than ever—to stay in there for the long haul. I don’t care how long these negotiations take. I am committed to it because I know that you people out there are not self-serving individuals out just for yourselves. Come on, we work in this community and we care about the type of product that goes out in this community and as representatives of the publisher, we care about the type of reputation our publisher has. And to listen to that man sit there and cut down the people that work in that plant just really gets to me. And I want you to go back and tell your supervisors and the people that you work with that the Company proposal on management rights, and no union shop, and no security is baloney. Let’s get back to what really counts—people—and the way people are treated and dealt with in the workplace. And it should be fair. And that’s the message we need to get across to our management so that we can get past this carpetbagging law firm, get them out of here, and let’s get back to doing what we all really want to be doing; that’s our job for a fair wage with good working conditions and our homes and our families and our community. Let’s send the message back to them. Get this guy back on the jet and back to Nashville where he belongs.

Tetrault’s speech is followed with cheers and applause from the audience.

Tetrault returned to work from her vacation during the period when the foregoing cablecasts were being aired. Notices of the cablecasts were posted on the Guild’s bulletin board at Respondent’s premises. Tetrault testified that several days after her return from vacation, Resch came up to her and said that he had seen her on television, and that he thought that “everybody” had seen her.

Resch denied that he had either viewed the cablecast of the program or had seen the videotape of the program, or that he said anything to Tetrault about it. However, Mike Redd, Respondent’s circulation operations manager, testified that the program was shown in a management meeting shortly after it appeared on public television, and that Division Manager Resch, Union Press Supervisor Whitlock, and Home Delivery Manager Julian would customarily have attended such a management meeting.

6. Tetrault’s return from vacation

When Tetrault returned from vacation, her district was in considerably worse shape than when she had left. She testified that upon her return she found that there were three “down routes” (routes where there was no carrier to deliver the papers, thus requiring the district manager to physically deliver the papers to the subscribers); that only 9 out of 22 outstanding paper bills had been paid by the carriers even though all paper bills for the previous month of July were due on August 11; that only 10 of the “carriers who were on route when she left were still on route; and that Glen Harms, her vacation relief, had left only cryptic notes of what had transpired while she was away.

²The complaint alleged that the Respondent had, after some negotiating sessions, engaged in and was continuing to engage in overall bad-faith bargaining in violation of Sec. 8(a)(5) of the Act. Bargaining continued during the course of the hearing, and the parties reached agreement on a collective-bargaining agreement approximately midway through the hearing, at which point the 8(a)(5) allegations were withdrawn.

Julian testified that he spoke with Glen Harms regarding the condition of District 128 during the time Tetrault was on vacation, and that:

Glen was overwhelmed by it. It was in such poor condition when he got it over. [sic] I remember he was very emotional, very, very upset, almost in tears. You know he was working hard, very hard, and putting an awful lot of hours in.

Commencing with the day she returned to work, and every day thereafter, Tetrault attempted to keep Resch up to date on the problems she was experiencing.

The day after she returned from vacation Resch told her that Rich Julian wanted to see both of them in his office. Julian told them that the poor performance on District 128 would no longer be tolerated, that something was going to have to give, and that Julian's boss, Walt Mordock, was no longer going to put up with it. Resch, in Tetrault's defense, said that Tetrault had been gone for almost 4 weeks. Julian said that didn't make any difference and that Tetrault was responsible for the district even though she was on vacation. Tetrault apprised Julian of the abysmal state of the district upon her return, and requested that other people be assigned to help with the collections. Julian told Resch to give Tetrault the help she needed. However, according to Tetrault, the assistance she was given during August and September, coupled with the overtime she worked in attempting to make collections after her normal duties had been performed, was simply inadequate for the task. Collecting money from customers for past months was very time-consuming and difficult.

7. The 1-day suspension; transfer to District 122

On September 22, Resch gave Tetrault another job performance memo for the second quarter of 1988. After a review of the pertinent statistics, the valuation states:

I have seen no substantial improvement in any areas of your performance since your last review, in fact, your performance in many areas has regressed. Therefore, I am suspending you for one (1) workshift effective Monday, September 26, 1988. You are expected to return to your regular workshift Tuesday, September 27, 1988.

Failure to improve your performance will result in a further degree of disciplinary action, up to and including discharge.

Resch told Tetrault he did not have any choice but to give her the memo, and that he had been ordered to do it. He told her he was sorry, and that he knew she had come back to a mess and was doing the best she could. Tetrault testified that she just sat there and cried. She told him she had not been given enough help to get the work completed; that there was no way one person could humanly do everything that needed to be done; that she had done the best that she could; that she had been working on her own time at night and on her days off; and that she wasn't able to sleep anymore, and had been having continual headaches. Resch said he wished she wouldn't get so upset about it, and that he did not have a choice.

As Tetrault was leaving the parking lot in her car, Resch came out and flagged her down. He said he wanted her to come back in and talk to Julian and him, and added that he thought he might be able to do something good for her and that there would be no discipline involved. She returned to Julian's office and was handed another memo advising her:

For business reasons compelling to the efficient operation of the department and your long standing request for a move, you are hereby transferred to District 122, effective October 1, 1988.

Julian said that he expected Tetrault to run the new district exactly the same if not better than Wes Bates, the current District 122 district manager. He also told her that she would be responsible for finishing with the September collections on District 122, and for completing the July and August route profit breakdowns, and asked her what it would take to do that. Tetrault said that she was in the process of collecting six routes; that she was not finished with the July and August collections; and that there were still outstanding receipts from May and June that were probably never going to be collected. Tetrault said that there was more work than one person could even conceivably do, and Julian said she would be given help.

Tetrault thanked Julian for taking her off District 128. She said she felt that she was at the end of her rope and could no longer take the stress. She also told him that she thought that it was stupid to give her the 1-day suspension when so much work had to be done. Julian said, "Well, that's out of my hands. That's done."

Regarding Tetrault's transfer, Resch testified that Tetrault's deadlines were not being met, that everything was getting further and further behind, and that he was "starting to lose control of the thing. I couldn't keep track of it myself." He spoke to both Julian and Inland Circulation Manager Jules Veuger about the possibility of transferring Tetrault to another district. At first, Julian was not very enthusiastic about the recommendation, but finally he agreed. Resch testified that the reason for the transfer was because:

I felt that [Tetrault] was on District 104 at one time and she did half way decent out there. . . . She put in for [District] 128 and she definitely was not managing that one effectively, but I felt she'd been here a long time and I thought, well, maybe I could give her the opportunity to show whether she could manage, period, or not, by giving her something that maybe was cleaned up let her get a fresh start. That was my reasoning.

8. Tetrault's work on both District 122 and District 128

Commencing on September 27, the day following her 1-day suspension, Tetrault accompanied several individuals who familiarized her with District 122. This district was comprised almost entirely of auto routes and had considerably fewer carriers than her former district; and it had no down routes.

One of the persons who accompanied Tetrault was Wes Bates, who had been the district manager for District 122. Bates had been promoted to division manager in place of Resch who, in turn, had been promoted to a different position. Steve Barrington replaced Tetrault as district manager of District 128. Thus Bates became Barrington's immediate

supervisor on District 128, and was also Tetrault's supervisor while she was finishing up her work on District 128.

While Tetrault and Bates were riding together in the company van they discussed the Respondent's bargaining proposals. Bates said that he believed the Company's "goal-based incentive" proposal would be beneficial for the district managers as it would give them the opportunity to make more money depending upon their individual efforts in managing their respective districts. Tetrault replied that the Respondent's goal-based incentive proposal was offered in lieu of any wage increase whatsoever, and that it was unfair because the districts were not equal and every district manager would not have the same opportunity to make more money. Tetrault added that a wage freeze was not her idea of making a lot of money, and that people could not take "opportunity" to the bank. Bates disagreed, and told her she was foolish. He told her the union shop was on its way out, and that "It won't exist when we're done with this negotiation."

Tetrault actually took over the work of District 122 on October 2 or 3, 1988, and thereafter was responsible for the management of that district as well as for completing the collections and submitting the paperwork that she was required to complete for District 128. A daily routine was established, apparently by Bates, although the record is unclear on this point. Tetrault was to deliver the papers to her District 122 carriers each morning, then make her "first call" in to the office at 6:30 a.m. and get her messages from carriers and customers; for example, carriers may call in and advise her that they are short of papers or have a problem, and customers may call in about not recycling a paper or about a billing problem. Then, after taking care of the first call problems, she has to proceed to District 128 and help Barrington collect on that district. The remainder of her calls on District 122, which consist of about four additional calls up to the "last call" at about 9:35 a.m., were to be picked up by another district manager who managed a district in proximity to District 122.

However, because of various contingencies beyond Tetrault's control, for example, an inordinate number of first call matters to attend to, or the failure of another district manager to pick up her other call, Tetrault would often not be able to begin her District 128 collections until after 8 a.m. Tetrault testified that typically the success rate for finding customers at home during the week after 8 a.m. is about one out of four, and that for about "every 30 doors you hit, you might get . . . three or four people to pay." On Friday, October 14, Tetrault called in and her call was transferred to Bates. He started "screaming" at her on the phone and said, "Listen, the overtime clock is running out. . . . I want those collections on 128 finished and I want everything turned over to Steve Barrington by Monday. . . . I know what it takes to run a district and you're not doing it as far as I'm concerned . . . and I want it done." Tetrault told him that Barrington did not have anybody making his calls so that he could spend his time collecting, and that she did not have anyone making her calls half the time, and that therefore she and Barrington had not been able to spend enough time collecting. Bates said he did not want to hear any more excuses about people not making calls for Tetrault and Barrington. Tetrault said there was no way the collection work could get done unless both she and Barrington were both free to do nothing but collect.

9. Tetrault's October 14 conversation with Operations Manager Redd

Immediately following her conversation with Bates, Tetrault called Operations Manager Mike Redd, who is Rich Julian's immediate supervisor. Tetrault was crying and Redd asked her to explain what was wrong. She told him of her conversation with Bates, and said that there was no way she could get the route-profit breakdowns, *infra*, turned in because the collections weren't finished.³ She asked Redd to intervene in her behalf. Redd told her to come in and see him that afternoon.

Tetrault testified that during the ensuing meeting with Redd that afternoon, Redd told her that in order to close the books for July and August, the route-profit breakdowns had to be completed. Tetrault replied that the route-profit breakdowns could not be turned in because the collections were not finished and the customers had not been paying. Redd replied, according to Tetrault, "Look, I don't care whether they're finished or not . . . all I want from you is the numbers on the papers . . . just fill them out to the best of your ability and turn them in. . . . I don't care whether they're right or wrong or whether the collections are done or not. . . . I just want those breakdowns in. Period." Similarly, Tetrault testified that:

When I explained to him [Redd] that all the collections were not in, there was still money to be collected, the kids [carriers] still had to be paid and they had not been, that's when he [Redd] said it didn't matter.

He wasn't saying it doesn't matter if they're [the route-profit breakdowns] wrong. Because I told him I was going to fill them out to the best of my ability.

Tetrault said that all she could do was to give him her best idea of where the money should have gone and which carriers should have been paid based on what she learned when she came back from vacation. Redd said that is all he was asking of her. Tetrault told him that she and Barrington had not had people to cover their regular calls every day on their respective districts, and had therefore not had enough time to make collections, as had been promised. Redd said that would not be the case for the weekend and that "I will personally guarantee and will write the note, myself, that Saturday and Sunday, you and Steve [Barrington] are to do nothing but collect on District 128." According to Tetrault, Saturdays and Sundays are practically the only good days to collect because customers are more likely to be home.

Tetrault told Redd that she had completed the route-profit breakdowns for July and should have those for August finished by Monday if both she and Barrington had the weekend to devote exclusively to collections. Tetrault testified that the four route-profit breakdowns for July had been completed by that time, and that she was holding them until the August breakdowns could be completed so that all the route-profit breakdowns could be turned in at the same time.

³ Tetrault also testified that she had had previous conversations with Resch about the route-profit breakdowns, and had asked Resch how she was supposed to reconstruct what had occurred during her vacation when Harms did not leave her the necessary information. She told Resch that she was astute going to try to "figure it out as best I could based on the information and lack of information that I had."

Redd asked Tetrault if she knew why she had been transferred to District 122.⁴ Tetrault replied that she had a pretty good idea based on office gossip and said, "The story I hear is that Rich [Julian] wanted to fire me as soon as I came back from vacation . . . and that he was told that he could not fire an employee who had a good work record previously, who had already been repeatedly requesting transfer off the district . . . and that he couldn't fire somebody for what something [sic] that happened when they weren't even there. And he was told that he couldn't fire me." Redd replied, according to Tetrault, "[t]hat's essentially correct."

After further discussion about the job performance review she had received on September 22, Redd said that it really bothered him to see her in such an emotional state as he did not feel that any employee should be driven to that point, and that he was really sorry. He asked her to "hang in there" until Monday and help get the collections completed. She said she would. Redd said that she and Barrington were to do nothing but collect on Saturday and Sunday; that after that she was to turn in the July and August route-profit breakdowns; and that "after that, you are to wash your hands of District 128." Redd went on to say that, "You are not to touch another receipt. You are not to worry about who gets paid, who doesn't get paid. You are not to have anything more to do with 128. I want you to go to District 122 and just work that district and not worry about 128, period."

At the conclusion of the conversation Redd said that he had been given good reports about her work on District 122 by Vince Phoenix, her new division manager. Redd and Tetrault shook hands, and Tetrault left.

Redd's version of the aforementioned conversation differs materially from the account given by Tetrault. Redd testified in substance that he simply told Tetrault to get the collections completed and turn in the route-profit breakdowns, and that they should be turned in properly and within the allotted timeperiod. He did not tell her to turn them in to the best of her ability nor that he did not care if the collections had been completed or not or that she did not care whether they were right or wrong or that she was not to worry about the carriers being paid. Redd testified that he told Tetrault, "If you do it right I don't have to protect you from Wes Bates and if you don't do it, heaven can't help you." Further, according to Redd, there was no discussion whatsoever, either by Tetrault or Redd, concerning the matter of Julian wanting to fire her.

While Redd's recollection of the conversation differs in almost every respect with that of Tetrault, there are some areas of similarity. Thus Redd testified that he did instruct Tetrault that she was to have nothing more to do with District 128 after she had properly turned in the route-profit breakdowns. Further, he was able to recall, on cross-examination, that there was a brief discussion of the collection problems Tetrault was encountering which were causing the delay in completing the route-profit breakdowns; and that Tetrault also told him that the vacation relief district manager, Harms, did not handle the district adequately, and that it went downhill while she was on vacation.

⁴It appears that this portion of the conversation occurred during a subsequent meeting with Redd, *infra*, rather than at the October 1, 1988 meeting.

10. Additional work-related problems during the weekend

The next day, Saturday, October 15, a fire in the press-room caused delays in getting out newspapers to district managers and, as a result, Tetrault was told by Bates to make all of her own calls on District 122 and worry about collections on District 128 later. Because of the fire, Barrington did not get his papers for delivery to his District 128 carriers until 10 a.m. and, because Tetrault's calls were not covered for her, she too was not able to begin collecting from District 128 customers until approximately 10 a.m. At about 12 p.m., Barrington, who had just completed throwing his last route and was exhausted, said that he was going home as he was too tired to begin collecting and had to get some sleep. He told her that they would just have to do the collecting the next day. Tetrault was also tired and exhausted, and did not make any further collections that day. During the time she did collect that day, however, she was able to collect enough money to pay the paper bill on one of the routes.

The following day, Sunday, October 16, no one was assigned to cover her calls on District 122, and Tetrault was not able to leave District 122 and commence collecting from the District 128 customers until after 10 a.m. She made further collections that day.

On Monday, October 17, the day Tetrault was originally given by Redd to complete the collections and turn in the route-profit breakdowns, the deadline was extended until Wednesday, October 19. However, her days off were Monday and Tuesday, and she did not work those days.⁵

11. The events of Wednesday, October 19; preparation of file folders for Barrington

On Wednesday, October 19, Barrington came by her house after "last call" and said that he needed to get all the records that she had at home concerning District 128. This consisted of numerous papers which Tetrault had accumulated over a long period of time, and filled a packing box. Barrington took the materials and told her that he had been instructed not to even discuss anything that was going on in District 128 with her after he collected the papers.

However, Barrington did leave some of the papers at Tetrault's residence, explaining to Tetrault that he didn't need them for his work on District 128. Later, sometime prior to the time Tetrault was suspended, Barrington called her and said he needed the other documents that he had left at her house, and asked her to put them out on the porch for him if she was not going to be home. He did pick up other materials after Tetrault was suspended.

That afternoon, Tetrault left the July and August profit breakdowns on Bates' desk. She went in to see Redd, and told him that she had done so. She further told him that "To the best of my knowledge, the numbers [i.e., the profit to the

⁵It is not clear why Tetrault did not make collections on District 128 on her days off. Apparently, neither the General Counsel nor counsel for the Respondent believed this to be a matter of significance, as Tetrault was not asked about this at the hearing. It appears, however, that the reason could have been a combination of two factors, namely, because Tetrault was becoming physically and emotionally drained from working both districts, and because the Respondent had criticized Tetrault for working so many overtime hours.

carriers as reflected in the route-profit breakdowns] are what should be [sic], but I'm not going to vouch that any of that was actually paid to anybody." She added that she knew that a lot of the carriers had not been paid. Redd said that was fine, and that was all he had asked her to do. She explained to him that she and Barrington had not had all day Saturday or Sunday to collect because of the problems caused by the pressroom fire. Redd told her she was to have nothing more to do with District 128.

Redd's account of the foregoing conversation is as follows: Tetrault said that she had not been able to finish the collections or the route-profit breakdowns. He told her to "turn in what she had and be done with it." Redd denied that Tetrault told him that any of the carriers had not been paid the amounts they were owed as reflected in the route profit breakdowns.

In cross-examination, Redd testified that Tetrault said she had turned everything in to Wes Bates even though the collections had not been completed. He told Tetrault "that it was over with," and that she should "turn everything in and we would get to the bottom of it from what had been turned in."

Thereafter, Tetrault continued to do her work as district manager for District 122. There is no contention that her work on District 122 was unsatisfactory.

Tetrault made out file folders for Barrington, and placed all the documents, receipts, copies of the route-profit breakdowns, and other materials for each route into a separate file folder so that Barrington would be able to ascertain the status of each route. She had previously begun to prepare the District 128 route-profit breakdowns for September, but had not completed them at the time she was told by Redd that the September breakdowns were not her responsibility. She testified that "Anything that I could find that I thought he Barrington, might need, I tried to get. I tried to get everything together and get it as organized as possible to give to him." She gave him copies of all the route-profit breakdowns that she had turned in so that he would know how much to pay the carriers when all the receipts had been collected, and said that "these are your only records of who's supposed to get what, don't loose them."

12. The *Weingarten* meeting; Tetrault's suspension and discharge

On Friday, October 28, Tetrault was called to a meeting with Rich Julian and Wes Bates. She was concerned since this meeting was clearly about matters having to do with District 128 and she had no further responsibilities in that district after October 19. She called Jules Yeuger, Inland circulation manager, to find out what the meeting was about. Yeuger said that from what he had been told it was just a factfinding meeting. Tetrault asked if discipline would be involved, and Yeuger told her, "Well, if the facts bear that discipline is warranted, I can't say that that won't happen." Tetrault said that she wanted to have a union representative there. Yeuger said that in that event someone from industrial relations would have to be there too. Tetrault was crying as she was talking to Yeuger. He told her to pull herself together, to try to get a Guild representative to sit in on the meeting with her, and to come in when she felt she would be able to pull herself together enough to talk. She contacted

Randy Betts, another district manager who was also a member of the Guild's executive board.

Those present at the meeting were Julian, Bates, Yeuger, Employee Relations Representative Sherri Adams, Union Representative Betts, and Tetrault. Tetrault was questioned about various matters. The questions were primarily directed to her responsibilities as district manager of District 128, and concerned the amount of overtime she worked in collecting the routes, problems with collecting and with certain carriers, and losses that had to be written off. The meeting lasted about 45 minutes.

On Monday, November 1, Tetrault received a phone call from Bates who told her that she was "indefinitely suspended, pending further investigation for gross misconduct and willful neglect of duty after warning, on District 128."

On learning of Tetrault's suspension, the Guild's administrative officer, Kemp, phoned Adams and asked why Tetrault had been suspended. Adams replied, according to Kemp, that Tetrault had been suspended for "gross misconduct involving dishonesty," as there was money unaccounted for on District 128. Kemp, during a subsequent phone conversation, told Adams that if all the documents relating to collections could be produced by the Respondent, Tetrault could account for all the money.

By letter dated November 4, 1988, the Respondent requested 16 categories of information from Tetrault. On November 11, 1988, Kemp hand-delivered a letter to the Respondent along with a box of materials in response to the Respondent's aforementioned request for information. He explained in the letter that certain documents requested were in the Respondent's possession, and that certain additional information requested from Tetrault would have to be compiled from records in the Respondent's possession and could not be furnished unless the Respondent provided those records to Tetrault.

On November 10, Kemp hand-delivered another letter to the Respondent stating, inter alia "[The Respondent] continues to demand that Nancy Tetrault account for the collections while at the same time denying her access to the people and documents necessary to do so." At another point in the letter, Kemp requested from the Respondent "All material of whatever kind pertaining to the collection of monies on District 128 for any period the [Respondent] expects Mrs. Tetrault to do an accounting."

Another meeting between the parties took place on November 11. Kemp, rather than Betts, represented Tetrault at this meeting. Kemp insisted that Tetrault be permitted to see the records and documents regarding District 128 which were in the Respondent's possession so that Tetrault could reconstruct what had occurred and intelligently respond to the Respondent's questions or accusations. Access to these documents was denied. Tetrault testified that in response to questions asked at the meeting she answered that she needed to see the documents and could not answer the questions without them. At one point, Adams started to reach for some documents, and Bates told her, "No. Put it away. We don't have to show them anything." Kemp testified similarly.

Bates acknowledged that Kemp requested information, and testified that, "My instructions, the instructions we had were not to provide them with any information." When asked to explain the reason for this, Bates testified, "That was because they had already filed a charge against the company

. . . with the National Labor Relations Board.”⁶ Notes of the meeting show that at the end of the meeting Kemp said, “You have not given her a chance to look at records and do an accounting. She’s done the best she can strictly on memory, he’s told you she thinks she can account for all the money but you refuse to give her a chance.”

On November 17, Bates wrote to Tetrault as follows:

On November 1, 1988, I suspended you without pay for an indefinite period of time. The reason I stated to you was gross misconduct involving dishonesty. After listening to your explanation of November 11, 1988, reviewing the information you chose to provide and information revealed by our investigation at this point, we have decided to discharge you effective immediately.

The letter goes on to specify various categories of “gross misconduct involving dishonesty,” “gross misconduct involving mismanagement of District 128,” “violations of numerous long established company policies,” and “willful neglect of duty after warning.”

13. Overview of the Respondent’s reasons for discharging Tetrault; accusations of theft

The Guild filed a grievance and requested the specific reasons for Tetrault’s suspension and discharge. On January 13, 1989, the Respondent sent the Guild a 10-page letter listing some 82 reasons for Tetrault’s discharge. The letter concludes with the assertion that “The publisher is still deciding whether to press criminal or other charges against Ms. Tetrault because of her acts.”

On September 14, 1990, the last day of the hearing, the Respondent recalled Bates as a rebuttal witness. Bates testified, *inter alia*, that he believed that Barrington should have been disciplined along with Tetrault because he “felt that somehow or another [Barrington] was involved with Nancy Tetrault in the goings on.” However, he decided not to discipline him because Barrington was to follow Tetrault’s instructions and do as she said. The following colloquy then took place:

JUDGE WACKNOV: So you thought that maybe Steve Barrington and Nancy were co-conspirators to steal money from the company?

THE WITNESS: That was a possibility that went through my mind, yes.

JUDGE WACKNOV: And the reason you didn’t do anything to Mr. Barrington then was because Nancy is the primary conspirator and you decided you didn’t need to get the co-conspirator?

THE WITNESS: I investigated Steve as well. I checked his bank accounts to see—to make sure that he was clean at that point as well. But he was acting under my instructions to act and follow Nancy Tetrault’s lead.

On page 71 of the Respondent’s brief, under the heading “Overview of the Termination,” which commences with the statement that “Respondent terminated Tetrault for her actions on district 128, which included the misappropriation of

money, mishandling of carriers, mismanagement of District 128 and violations of established Company rules and policies,” the Respondent, in a footnote, states: “There was major discussion on the record regarding whether misappropriation meant stealing. For purposes of this matter, misappropriation refers to misapplying funds and not to conversion for personal gain.”

It was not until the hearing in this matter, however, that the General Counsel, the Guild, and Tetrault learned, through a lengthy examination and cross-examination of one of the Respondent’s primary witnesses, specifically what conduct had been relied on by the Respondent to warrant Tetrault’s discharge

14. Respondent’s investigation of Tetrault

Abundant record evidence show that the Respondent’s investigation of the matter was extensive and time consuming, and that the Respondent reviewed hundreds of documents, interviewed numerous company supervisors and representatives, and took statements from as many carriers or former carriers as it could locate, in order to obtain information regarding Tetrault’s handling of District 128 during the period of time involved.

The record is also clear, and I find, that throughout its protracted investigation, and after having allegedly discovered serious and clear acts of misconduct warranting discharge, the Respondent elected to rely on such information without specifically accusing Tetrault of any such alleged misconduct. It did not provide either her or the Guild with an opportunity to show that Tetrault’s supervisors were not only aware, but had instructed her to handle matters in a certain way; that statements taken from carriers were either false or based on misunderstanding;⁷ and that practices which the Respondent viewed as misconduct were actually common practices engaged in daily by district managers with the approval of their supervisors. Further, in each instance, the Respondent interpreted the information it had collected in a light most detrimental to Tetrault, without permitting her to reconstruct the events in question with the assistance of the voluminous documents amassed by the Respondent.

Employee Relations Representative Sherri Adams testified regarding the Respondent’s policy of investigating employees for misconduct. She stated that the procedure adopted by the Respondent has been in effect since at least 1983. The standard operating procedure, according to Adams, is to conduct a *Weingarten*⁸ meeting with the employee and his or her union representative, and to ask questions. She stated that at such meetings “Employees are basically given the opportunity to explain his or her position.” Then, the Respondent looks in to whatever the employee has said, and makes its decision and acts upon it without confronting the employee with the fruits of its investigation. Thus, in accordance with

⁶However, it should be noted that the only charge that had been filed at this point was a charge alleging that the Respondent had been engaging in bad-faith bargaining.

⁷It should be noted that in each of the numerous instances of alleged misconduct involving Tetrault’s failure to pay carriers their appropriate amount of profits, the Respondent thereupon did pay the carriers what they maintained they should have received without verifying these amounts with Tetrault. The record shows that this resulted in many carriers being paid well in excess of what they were actually owed. Some of these carriers testified in this proceeding. One of the carriers admitted that he was paid considerably more than he was actually owed.

⁸*NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975).

this established procedure, according to Adams, Tetrault was admittedly not confronted with the fruits of the Respondent's investigation following the October 2 or the November 1 meetings. In fact, according to Adams, it was unusual that Tetrault was granted a second opportunity, namely, the November 11 meeting, to explain her conduct; moreover, information provided at this latter meeting, which was at the request of the Guild, disclosed still further instances of misconduct which were thereafter investigated and substantiated by the Respondent.⁹

Both Kemp and Michelle Davis, an official of the Guild, testified regarding numerous prior *Weingarten* meetings they had attended in their representative capacities, which meetings involved possible disciplinary actions against unit employees. Their testimony, in summary, shows that they have had considerable experience in representing Guild members over many years, and that both the Guild and the employee involved in possible disciplinary action are customarily advised, either prior to or during the *Weingarten* meeting, of the specific allegations of misconduct under investigation, and are provided an opportunity to answer these allegations. Thus, according to Kemp and Davis, before an employee is disciplined or discharged, all parties are well aware of the specific reasons for such action. I credit their testimony.

15. Analysis of the Respondent's reasons for discharging Tetrault

The Respondent's 82 alleged reasons for discharging Tetrault are, in many instances, highly redundant. Thus, for example, it appears that some 28 of the reasons, which are variously referred to in the January 13, 1989 letter as "improper commingling of money from different routes," "misappropriation and/or conversion of Company funds," "misappropriat[ion of] carrier collections to other routes," and "misrepresentations made to management," have as their basis one fundamental procedure utilized by Tetrault and, as the evidence discloses, virtually all other district managers, namely, the fact that "cash turn-ins" submitted by Tetrault contained customer checks for routes other than the routes listed on the cash turn-ins. Other alleged acts of misconduct are characterized by similar descriptive terminology.

a. *Cash turn-ins*

A cash turn-ins slip shows the total amount of money, represented by checks, cash, and coins, which a contracted carrier has collected and submitted, during the collection period, to the district manager for the purpose of paying, in whole or in part, the contracted carrier's paper bill on that carrier's particular route.

The cash turn-in consists of the aforementioned cash turn-in slip together with the appropriate checks, cash, and coins. Prior to submitting the checks to the district manager, the

carrier is to write the route number and his or her identification number on the front of each check.

During Adam's investigation of Tetrault, it was discovered that many cash turn-ins submitted by Tetrault during the period in question contained checks with route numbers that did not correspond to the routes listed on the front of the cash turn-in slip. This, according to Adams, caused the Respondent to conclude that Tetrault had engaged in the various wrongful acts specified above.

Abundant credible record evidence shows, however, that this is a common, accepted, and timesaving practice, which numerous district managers follow on a daily basis, and that the Respondent's supervisors are well aware of this practice. Thus, it is customary for a district manager to cash checks for carriers in the field for a variety of reasons. For example, if a carrier has previously paid his paper bill and has thereafter collected additional checks which represent his profit, the only way to cash the checks is to submit them to the Respondent. And the most expedient way to do this is to give them to the Respondent's district manager who delivers the papers to the carrier and therefore has contact with the carrier on a daily basis. The district manager would have no cash on hand from the carrier's particular route since the carrier has previously paid his or her paper bill. Therefore, the money is taken from the cash submitted by some other carrier on a different route, and the cashed checks from the first carrier's route are submitted with the turn-in for the latter route.

Catherine Proffetta, who occupied the position of training district manager with the responsibility of training new district managers, testified that not only was there never any policy prohibiting the cashing of one carrier's checks out of collections from another route, but that she trained new district managers to follow this procedure. Further, it was common practice for one district manager to cash carriers' checks for another district manager, who would then place the checks in his or her cash turn-ins which checks not only represented a different route but even a different district. District Managers Ron Chouinard, Robert Kemp, and Michelle Davis testified similarly. Moreover, it was stipulated that various additional district managers would so testify.

In rebuttal, Division Manager Bates testified that while he was a district manager he did not utilize this method of cashing checks for carriers, nor did he train other district managers to do so.

Bates testified:

I didn't train them to cash checks in the field. I trained them to receive the checks from the carrier, take them upstairs to the fourth floor [of Respondent's premises], cash them at the cashier's window, turn in the money to the division manager during that night and then they signed for it back in the morning and give it to the carrier at that particular point in time.

However, Bates did not testify that the procedure utilized by Tetrault and many other district managers is unacceptable or cause for discipline or discharge.

I find that the credible record evidence demonstrates that the procedure utilized by Tetrault was a common and accepted practice.

⁹There is some dispute between the parties regarding the November 11 meeting. The Respondent apparently maintains it was not a *Weingarten* meeting as it was initiated by the Guild in order to account for the missing moneys. The Guild, on the other hand, had requested records from the Respondent prior to the meeting in order to reconstruct what had occurred, and since the Respondent refused to furnish the records either prior to or during the meeting, the Guild was precluded by the Respondent from presenting information favorable to Tetrault.

b. *Route-profit breakdowns*

It appears that another 28 of the reasons for discharge alleged in the January 18, 1988 letter, which appear variously as "Failure to properly account for Company funds," "misappropriation and/or conversion of Company funds," "falsely claim[ing] to have made specific cash payments to carriers," "False claims that payments were made to carriers," and "gross mismanagement of District 128 and a willful neglect of her duty," have as their basis the fact that on October 19 Tetrault turned in numerous route-profit breakdowns which the Respondent allegedly deemed to be untimely, incorrect, deficient, and incomplete, and, apparently, indicated that Tetrault was embezzling money from the carriers and/or the Respondent.

The particular route-profit breakdowns in question were turned in by Tetrault on October 19, and were the subject of the various conversations Tetrault had with Redd, related above.

A route-profit breakdown is prepared and submitted by a district manager when the route in question has no officially contracted carrier for the month in question. Thus the district manager, in effect, becomes the carrier, and is responsible for delivering the papers each day and for making the collections each month. However, some or all of the profits, that is, the amount collected which exceeds the amount of the monthly paper bill for the route, is owed to carriers who delivered the papers during the month. This is a frequent occurrence, as explained below.

The route-profit breakdown form which is prepared by the district manager shows, for any given month, the amount of the paper bill for the route, the total amount of money collected from the customers, the total amount of "uncollectibles," or money unable to be collected from the customers who owe money, and the amount of "profits," or money owed to the carrier or carriers, if any, who delivered the papers during the month. Generally, the "profit" to the carriers is calculated by deducting the amount of the paper bill from the amount of money collected from the customers, and the resulting amount is then divided by the number of days in the month. The latter figure is the "profit per day." Then, the profit for each carrier is calculated by multiplying the "profit per day" by the number of days that each carrier delivered. It is axiomatic that if the collections for the route have not been completed, that is, if each of the customers has not been visited by the district manager in order to obtain, or fail to obtain, payment of the amount owed, then the district manager has no way of submitting a route-profit breakdown which is entirely accurate since additional money is likely to be collected. The collecting of more money, in turn, will affect each entry in the route-profit breakdown, including the amount of profits to be divided by the carriers.

I fully credit Tetrault's accounts of her several conversations with Redd, *supra*, and find that she made it emphatically clear to him that all the collections had not been completed, and specifically pointed out to him the various causes for the delays and difficulties in compiling the necessary information and in collecting and completing the route-profit breakdowns within the allotted time. Moreover, I find that Tetrault advised Redd that the carriers named on the route-profit breakdown had not been paid by her, and therefore to her knowledge were owed the money indicated.

The route-profit breakdowns contain a space for the carrier's signature, and the carrier is to sign it in order to verify that he or she has been paid his or her profits. Extensive record evidence on this point shows that the absence of a carrier's signature on a route-profit breakdown signifies that the carrier has not been paid, or that the district manager may have paid the carrier but neglected to obtain his or her signature, or that the carrier has refused to sign because he or she disagrees with the amount calculated by the district manager, or that there was some other problem. Customarily, when there was no signature, the district manager would write a brief explanation for the absence of the signature on the route-profit breakdown.

The fact that the carriers had not signed for the money they were owed was immediately noted by Bates, who testified that when he inspected the route-profit breakdowns submitted by Tetrault, he became so "concerned" about the absence of signatures that he undertook to contact each of the carriers to see whether they had been paid their profits. He concluded, after contacting the carriers, that the named carriers had not been paid. This is precisely what Tetrault had told Redd when she turned in the route-profit breakdowns.

When Home Deliver Manager Julian saw the route-profit breakdowns, he immediately wrote on them the notation "no signature." He testified that the absence of signatures was significant. Thus Julian testified:

I don't know if the carriers got the money. This ninety-nine dollars and ninety-eight cents on line fourteen [of the route profit breakdown], number one, when I don't see the carrier signing the name, that looks rather suspicious; that perhaps this carrier did not get his money that he was entitled to. That's the main thing.

Again, the carrier, Michael Colby, I was not so sure that the carrier got the money the amount of money, a hundred and twenty-two dollars and fifty-nine cents, because the carrier didn't sign it that he received it.

Julian was then asked whether it was "customary that a carrier should sign for receipt of money on these route profit breakdowns?" He replied, "what's the policy."

Further, Bates testified that Julian was "extremely distressed" that the route-profit breakdowns "didn't have any signatures showing that the carriers had received the money."

Tetrault said that when she finally was able to get all the documentation together to complete the route-profit breakdowns, which is an elaborate and time consuming task as the monthly history of each customer and each carrier must be reviewed, she was fighting the deadline given her and did not have time to do any more collection work. Rather, she was ordered to turn them in and be done with it. Tetrault testified that:

I expected Wes [Bates] to go over them with me. When I left them on his desk, I figured if he had any questions about why they weren't signed, he would have asked me. And when he never asked me, I assumed there wasn't a problem with them, because he never asked me about them.

The past practice has always been that if I put a breakdown on Don's [Resch's] desk, before Don ever

signed it and turned it in, we sat down and he sat down with his calculator, and he checked my math and we went over every single line of every single breakdown, and then he signed it and turned it in.

And I assumed that if Wes had a question about the breakdowns he would have asked me. And he never asked me. So I never said anything more because I assumed everything was okay until October 28th.

Tetrault further stated that she did not customarily write detailed explanations on route-profit breakdowns because it had been her experience with her previous division manager, Resch, that Resch would be the one to write such notes before he would sign them, since by signing them he was verifying their accuracy.

I do not credit Adams' assertion that during either the October 28 or November 11 meetings Tetrault or Kemp stated that all the carriers listed on the route-profit breakdowns submitted by Tetrault on October 19 had been paid. Rather, from various accounts of the meetings, it appears that Tetrault indicated that either she or Barrington may have paid some carriers some of their profits, which in fact was the case, but at no point did Tetrault state that any particular carriers named on the the unsigned route-profit breakdowns submitted by her on October 19 had been paid. Nor was she asked during either of these meetings why the carriers' signatures were absent from the route-profit breakdowns. Further, as noted above, Tetrault had previously told Redd that she was unable to verify that the carriers had been paid.

Finally, it is entirely implausible that Tetrault would intentionally misrepresent to the Respondent that she had paid approximately 11 carriers a total of about \$800 if, in fact, those carriers had not been paid, since the carriers would undoubtedly contact the Respondent and complain about not having received their profits.

While Tetrault's recollection of the various conversations and the events in question may contain certain inconsistencies, it is clear, and I find, that Tetrault told both Resch and Redd that she had done the best she could under difficult circumstances, and that she had put forth her best effort in order to complete the route-profit breakdowns as accurately as possible within the time allotted. While the record does not show precisely the number of customers who had not been contacted, it appears that there were uncollected receipts in the total amount of about \$1000 which were potentially collectible.

From the foregoing, it is clear that Tetrault did not, as alleged in the January 13, 1989 letter, fail "to properly account for Company funds," or "misappropriate money," or engage in the other alleged irregularities involving the route-profit breakdowns. To be sure, they were submitted several months late, but much of the delay, I find, was due to the disarray of the district upon Tetrault's return from vacation.

As mentioned above, Tetrault, on her own volition, had provided Barrington with separate file folders for each route so that after Barrington had completed the collections, he could pay the carriers listed on the route-profit breakdowns their profits.

The Respondent's January 13, 1989 letter alleges that the route-profit breakdowns for September suffer from the same deficiencies as those for July and August, and these alleged deficiencies account for another reasons for Tetrault's dis-

charge. However, as found above, Redd relieved Tetrault of any further District 128 responsibilities on October 19 at which time he told Tetrault that she was to have nothing more to do with District 128.

Indeed, the route-profit breakdowns for September, for which Tetrault was held responsible, were prepared by Barrington, not Tetrault. Thus, Barrington testified that Bates told him in about the mid-October that Tetrault was not going to be "touching" District 128 any longer and that Barrington was to be responsible for making the balance of the September collections, getting the paper bills paid, and submitting the route-profit breakdowns. Barrington expressed concern, as he did not officially take over District 128 until October and would not customarily be responsible for District 128 until that date, and asked Bates what was going on. Bates indicated to Barrington that he believed Tetrault was going to be suspended or fired. Barrington told him:

Wes, if you're planning on firing Nancy for collections not being done or for the overtime involved in doing the collections, the condition of the district, basically that he was barking up the wrong tree because there's plenty of people that work for the Union Tribune that had been out there and had experienced the collection problems, and knew how long it took that would be willing to testify to that fact. He [Bates] said we haven't done anything yet.

In this regard it should be noted that the Respondent introduced into evidence a signed statement from Paul Noga, one of the district managers who assisted Tetrault and Barrington with the District 128 collections. This statement indicates how difficult it was to collect outdated receipts from customers. Noga states:

On Oct. 10, & 11 I assisted Steve Barrington in collecting on District 128. I was given a clipboard with receipts (Approx. 30) with names and addresses on them. On Oct. 10 I had collected Approx. 6 checks, and \$8.50 in cash The next day (Oct. 11) Steve told me I had collected the most money of anyone. On Oct. 11, I had collected only 2 checks.

Barrington turned in the September route-profit breakdowns on about October 29. Up to this point Barrington, a new district manager, had only helped with the preparation of a limited number of route-profit breakdowns, and he asked Bates for assistance. Bates instructed another district manager, Wayne Pullis, to assist Barrington in preparing them. Barrington said that the route-profit breakdowns he turned in were as accurate as possible, but that he, too, had submitted unsigned route-profit breakdowns. He went on to explain that:

With the information that was given to me, the receipts and so forth that I had, they [the route-profit breakdowns] were filled out to the best of my ability. When I turned them in to Wes [Bates] I told him that on the different profit breakdowns were the bills that had been paid that I knew was [sic] in, but as far as the carriers were concerned with the exception of George Lopez receiving some of the money, that I

didn't know if the other carriers had received money or not.

c. Allocating collection money to the wrong routes

Two additional allegations of "improper commingling of money from different routes" involve the combining of collection money from different routes, and using the money to pay paper bills in an indiscriminate manner rather than allocating the moneys collected to the appropriate routes.

During the October 28 meeting, Tetrault stated that the collection money from two separate routes in her district, routes 14 and 27, had been combined because the routes were being delivered by the same carrier. Tetrault had previously discussed this with Resch. The paperwork was not initiated to combine the routes, however, until late September or October 1, even though the routes had effectively been combined since August. Under these circumstances, Tetrault saw no problem with combining the money collected and using it to pay the paper bill for the 27 route, rather than keeping the money separate and being able to pay neither paper bill. It did not matter which paper bill was paid with the collection money since, under these circumstances, the carrier's total profits would not be affected.

Money collected from the 02, 07, 16, 22, and apparently the 12 route was also combined. Tetrault explained that after she began her job as district manager for District 122, during the period that she, Barrington, and several other individuals were collecting on various District 128 routes, the money collected on a particular route on any given day would be placed in separate envelopes and put into zippered collection pouches. Tetrault was so busy with her work on District 122 and with collecting on District 128 that she did not have time to monitor the collection process. Each day those individuals doing the collecting would be given receipts to collect together with money from the envelopes in order to make change for the customers. Also, the money was used to cash checks for carriers and, apparently, to pay some carriers. The pouches were not always in Tetrault's possession. According to Tetrault, things got out of control with so many people involved in the collection process, and eventually the money in the pouches from the various routes became combined.

Tetrault testified that the combining of the money would not have occurred if she had turned in the moneys on a daily basis. However, Resch had told her not to make partial turn-ins of the money as this would be more time consuming and a nightmare for the accounting department, and instructed her to wait until she had accumulated a substantial amount of money before turning it in. Later, when Tetrault found the time to turn in the collections according to particular routes, she was unable to do so because the money had become combined as described above. Tetrault testified that in order to separate the moneys collected so as to ascertain what amount came from any specific route, she would have "to try and sit down with the checks and all the receipt stubs and the receipts, and the route lists from all the routes, and try to figure out who had and who had not paid. And there was never time to do that."

Barrington testified that he talked to Bates on almost a daily basis about the condition of the district, and some time in October told Bates that:

[A]t one point the money had gotten confused and that it was just like in a big kitty, and that with other people doing the collecting we really didn't know which money was collected on what route, unless we went through and checked all the stubs to see what was turned in.

d. Failure to promptly turn in collections

The Respondent also accused Tetrault of "failure to promptly turn in collections," which conduct also constituted "misappropriation and/or conversion of Company funds."

Under this category, the Respondent alleges, inter alia, that "Any funds collected on route 128-26 on September 20 and 22, 1988 were not turned in until October 16, 1988," and that "Any funds collected on route 128-16 on September 20 and 22, 1988 were never turned in." This is incorrect. Exhibits introduced into evidence by the Respondent show that checks from the 16 and 26 routes dated September 20 were, in fact, turned in on that date.

Further, Adams testified that she believed Tetrault had not turned in collections promptly because there were no entries on the cash turn-ins indicating that any payments were to be allocated to a particular route. That meant, according to Adams, that Tetrault must have held the money until such time as a route turn-in hearing the appropriate route number was submitted. However, as found above, it was the common and accepted practice to cash checks for carriers or other district managers in the field, and place those checks in turn-ins for the routes from which the cash was taken. When Adams was asked whether it was her "testimony that in reviewing the checks and the cash turn-ins that you did not find any checks from route 128-26 on any turn-ins prior to October 16," Adams replied, "I didn't say that. There were no entries on any of the cash turn-ins that indicated any payments were to go to the 128-6 route."

Adams further testified, regarding all the allegations in this category, that she was looking on the face of the turn-in sheet submitted by Tetrault to see if collections for the routes in question had been turned in, and did not attempt to ascertain whether collections for the routes in question were attached to other turn-ins for other routes.

The record evidence shows, and I find, that in fact Tetrault did turn in collections in a timely manner. There is no merit to the Respondent's contention.

e. Carrier Robert Bible

Bates testified that in mid-October, an adult carrier, *Robert Bible*, who was in his early twenties, came to Respondent's premises, and told Bates that he had just been "fired" that morning by Barrington, that he had not been paid, and that he was contracted but was never allowed to collect. Bates testified that he was concerned because Bible "was very verbal" and this caused the guards to call for additional backup personnel in case of trouble. Bates told Bible that he would look into the matter.

Bates then asked Barrington about the situation. Barrington told him that Bible's payment for delivering the paper would be coming from Tetrault, and that he had fired Bible that morning because Bible didn't have gas money to deliver the route and Barrington was tired of giving him money for gas.

Bates asked Tetrault about Bible, and she told him that Bible was “a scum bag and that he wasn’t doing the job and that he deserved to get fired, basically, and that he had been paid.” Thereafter, Bates had no further conversations with Tetrault about Bible.

Tetrault testified that when she contracted Bible in August or September she put in \$40 of her own money for Bible’s bond, and also gave him gas money from her personal funds. She told him that she didn’t know what his gas allowance would be, but that he was entitled to a gas allowance. Bible had agreed to reimburse her for the bond deposit when he got paid that weekend from his regular job, but he never did pay her back. The Respondent has no policy prohibiting such a personal loan to an adult carrier. Although Bible was contracted, he was not given receipts to collect because there were still receipts from May, June, and July to be collected, and unless the money for all the months was collected at one time “there was no way [customers] were going to pay those bills.” Also, Barrington told Tetrault that Bible had lost his regular job, and that he would begin delivering at 5 a.m., but would leave the route from 6 to 7 a.m. in order to drive his mother to her place of work, and would not return to complete his deliveries until 7 or 7:30 a.m. Tetrault was concerned that he might “walk with the money,” and was reluctant to trust him with the receipts for 3 months, which totaled quite a large amount of money.

Tetrault testified that:

Normally what you do in a case like that is you have the new carrier collect the old receipts at the same time he was collecting his receipts and turn in the money to you, and pay him so much per receipt so that the manager didn’t have to do it.

But because of what happened with Michael Gregory [a prior carrier, because he made off with the money and everything else, Rich [Julian] had made such a big deal about it I was afraid if I let [Bible] collect because he had lost his job that he would do the same thing. That he would take the money and I would never see it.

Tetrault spoke with Resch about this in September, after she had been transferred to District 122. She testified as follows regarding her discussion with Resch:

I went in and I talked to Don [Resch] because I counted up the number of routes that I was in the middle of collecting, including the route, and I told him that I was going absolutely crazy, that I was trying to collect seven routes and trying to work two districts. And that I was losing it.

And Robert Bible was one of the routes that we discussed that day. And he asked me, “Well, why don’t you just give him the receipts then?” And I said, “Why, because what’s going to happen—are you going to take responsibility for that if they run off with the money like all these other people have done?” And he says, “Well, no, I understand what you are trying to do.”

Tetrault and Barrington gave Bible cash when he needed gas money, and kept a record of what they had given him. Tetrault told Bible that she would pay him his profit as soon

as she collected the receipts and got the bills paid, and that she wanted him to start off with a clean slate and wanted to help him, not hurt him. Everything pertaining to Bible’s route was in the file folder that Tetrault gave to Barrington upon her transfer from District 128 to District 122 at the beginning of October. Every single route had a separate folder, “and all of the profit break down material, all the lists of all the receipts, everything was in those folders.”

Regarding the gas allowance, Tetrault credibly testified that the procedure had not been explained to her, as she had not had to initiate an auto route gas allowance under the new system.¹⁰ Further, she did not know that the paperwork for the gas allowance was to be submitted together with the contract. At a later date Barrington turned in the paperwork for the gas allowance.

f. *Carrier Da Le*

Bates, during the course of the investigation of Tetrault, contacted a carrier, *Da Le*, who told Bates that in August he had been given some receipts to collect on his route representing July newspaper deliveries, that he did collect \$200 from customers, and gave that money to Tetrault together with the remaining uncollected receipts.

Tetrault testified that during the course of their daily conversations regarding the district Tetrault told Resch that a carrier by the name of *Da Le*, whom she had hired shortly prior to her vacation but had not had a chance to contract, was totally unreliable. She explained that he was not delivering his route and that Tetrault was having to throw his papers for him; that he would not meet with her; that he had been given receipts to collect by Harms who had apparently contracted *Da Le* during Tetrault’s vacation; that he had not paid his paper bill for July; that *Da Le*’s personal check for his security bond, which each carrier is to provide, had bounced; and that Tetrault was able to contact *Da Le* only by phone, and he told her he would give her the money and the receipts, but that he would no longer be delivering the route.

Thereafter, Resch contacted *Da Le* by phone, and scheduled an appointment between *Da Le* and Tetrault so that *Da Le* would turn over the money he had collected together with the remainder of the receipts. However, *Da Le* never kept this appointment. Again, Resch contacted *Da Le*, arranged another meeting, and advised Tetrault that *Da Le* was to deliver the money and the receipts to the Respondent’s premises on a particular day. However, *Da Le* never appeared. Thereafter, with Resch’s approval, *Da Le*’s route was sent to collections and the collecting was no longer Tetrault’s responsibility.

Tetrault stated that she never met with *Da Le* after she came back from vacation, but rather only spoke to him by phone, and that she never collected any money from him. The Respondent never advised her that *Da Le* had told Bates that he had given the \$200 to Tetrault, or asked for Tetrault’s version of the matter. Nevertheless, the Respondent elected to credit *Da Le*’s assertions without even questioning Tetrault about the matter.

¹⁰ See discussion of the gas allowance procedure under subsection “m” *infra*.

g. Carrier Richard Robinson

The Respondent maintains that Tetrault engaged in some eight acts of misrepresentation and misappropriation involving another carrier, *Richard Robinson*.

Tetrault testified that Robinson, age 16 or 17, was a contracted carrier on the 14 route prior to her vacation. When she returned from vacation she found that Harms had placed Robinson on a different route, the 02 route. She prepared a new contract for him to sign for the 02 route, but prior to submitting the contract she was told by Barrington that Harms had already completed the paperwork for the transfer. She did not learn until after August 17, the final date for submitting a carrier's contract for the current month in order that the route would belong to the contracted carrier rather than to the district manager, that in fact Harms had not submitted the paperwork. Therefore, Robinson continued to be a contracted carrier, with a bond account, on the 14 route although he was delivering the 02 route for August. Robinson had timely paid his paper bill for the 14 route for July.

During Tetrault's vacation, Harms had given Robinson all the receipts to collect on still another route, the 27 route, as the carrier on that route, Steven Guess, had quit prior to making his collections for July. Tetrault asked Robinson for the money to pay Guess' paper bill and for Guess' profit, as Guess was owed the profit for delivering the route even though Robinson collected the money for the time that Guess had delivered the route. Robinson gave Tetrault just enough money to pay the paper bill, and said that there was no profit. Tetrault spoke to Resch about this, and questioned Robinson's integrity.

Similarly, after several unsuccessful attempts to pick up collections from Robinson in early September for the 02 route he delivered in August, Robinson finally left some checks and uncollected receipts, but no cash, in an envelope underneath his front door. The amount of the checks and the uncollected receipts were insufficient to pay the paper bill for that route.

Thereafter, Tetrault did not meet with Robinson, but was only able to talk to him on the telephone. Robinson told her that he was living with his father and not his mother at the time, and that his father had told him there was no way Robinson could be held responsible for the paper bill for the 02 route as that route was not officially in Robinson's name. Tetrault advised him that he collected the receipts for the route and was therefore responsible for the money. He said that his dad said he didn't have to pay the money, and hung up on Tetrault. That was her last conversation with Robinson.

Tetrault spoke to Resch about the matter and asked him, "Do we let the kid get by with stealing the money because the contract was not transferred or do we tap his bond to pay the bill because he took all the money?" Resch told Tetrault that it was an unusual circumstance to tap the bond on one route to pay the paper bill on another route, and that he would only authorize it if Tetrault received permission from Robinson's mother to tap his bond. Tetrault met with Robinson's mother, explained to her that Robinson owed the Respondent the money, and Robinson's mother signed the bond release authorizing the Respondent to tap the bond. Then Tetrault told Resch what had transpired.

During the course of its investigation the Respondent spoke to Robinson and apparently to Robinson's mother, and

came to the erroneous conclusion that Robinson had in fact paid the paper bill for the 02 route, that Tetrault had not paid him the profits he was owed for delivering that route for August, that Tetrault should not have tapped Robinson's bond since Robinson did pay the paper bill, and, apparently, that Robinson's mother was given erroneous information which caused her to authorize the bond tap.

The Respondent contends that the daily activity report of September 15 shows that although Robinson called in to advise Tetrault that he had collection moneys to turn in to her, nevertheless Tetrault tapped Robinson's bond on September 16, the following day. This allegedly caused the Respondent to believe that Tetrault tapped Robinson's bond *after* she had been notified by Robinson that he had the money for his paper bill, but *before* she picked up the money from him, and that therefore the bond tap was either unnecessary or premature. I credit Tetrault's testimony that she filled out the bond tap on the same day that she picked up the collections from Robinson's home, after first ascertaining that the collection checks and receipts were insufficient to pay the paper bill, and that she obtained the authorization from Robinson's mother within a day or two thereafter.

At no time did the Respondent question Tetrault about what it allegedly learned from Robinson or his mother in order to attempt to ascertain Tetrault's version of the Robinson matter. Rather, the Respondent elected to believe Robinson even though Tetrault had made Resch well aware of Robinson's lack of integrity. I credit Tetrault's testimony in its entirety and find that she accurately advised Resch of the details of the Robinson matter and that Resch was not somehow deceived by Tetrault into authorizing Robinson's bond tap. Moreover, to the extent that the Respondent allegedly relied on any documentary evidence, such as route-profit breakdowns or daily activity reports, in arriving at its conclusion that Tetrault had engaged in improper conduct, the evidence shows that, similarly, Tetrault was not asked about these documents until the hearing in this matter, at which time she provided an explanation of the relevant portions of the documents, which is consistent with her account of the Robinson matter, and which I credit in all respects.

In this regard, it should be noted that one of the documents involved in the Robinson matter is a route-profit breakdown for the 02 route for August, which indicates that Robinson is owed a profit for that month of \$120.89. Similar to the other route-profit breakdowns submitted by Tetrault, discussed above, this one bears no carrier's signature. Tetrault noted on the form, however, that "Carrier was contracted on [District] 128 [route] 14 and not transferred—delivered all [month], spent \$ and we tapped his bond for bill." Tetrault testified that in fact Robinson was "paid" more than the amount to which he was entitled as profit because he kept additional money that he should have turned over to the Respondent.

It is clear that Tetrault's notation on the route-profit breakdown apprised the Respondent of the fact that Robinson's bond had to be tapped in order to pay the paper bill, and that therefore Robinson was owed no profits by the Respondent. As explained above, one reason for the absence of a signature on a route-profit breakdown is because a carrier may disagree that he or she has been paid. Moreover, to the extent that Tetrault or Kemp may have indicated at either the

October 28 or November 11 meeting that carriers had been paid, this is an example of such a situation.

h. *Carrier Seth Rojas*

The Respondent alleges in the January 13, 1989 letter that Tetrault engaged in similar acts of misrepresentation, misappropriation, and misconduct in her dealings with a number of other carriers.

The Respondent claims that Tetrault took the collection money and receipts from *Seth Rojas*, a contracted carrier, after Rojas had collected enough money to pay his paper bill, and that Tetrault told Rojas that she would complete the collections and give him his profits thereafter. However, the Respondent, without questioning Tetrault about the matter, credited Rojas' representation that he was not paid his profits, thus apparently causing the Respondent to believe that Tetrault had pocketed the money.

Tetrault gave the following account of the Rojas matter. Rojas quit his route prior to the time Tetrault returned from vacation, and thereafter told Tetrault that he was not going to complete the July collections in order to pay his paper bill. He turned in certain collection money and receipt stubs to Tetrault on August 10. The amount of money he turned in was \$120.05, but the receipt stubs he also turned in showed that he had collected a total of \$299.40. Tetrault asked him where the rest of the money was that he had collected, and Rojas said he had needed money for something and had already spent it. At that point Tetrault took the remaining receipts from him because there was still an outstanding balance on the paper bill of \$140.88. Tetrault testified that under the circumstances, taking the receipts from a contracted carrier was not a violation of any company policy; that she believed Rojas had kept more than his profit should have been; and that if she did not take the receipts from him, the Respondent would never get the remainder of the money owed on the paper bill because, according to Tetrault:

Well, because if the carrier's going to be so irresponsible as to number one, dump his route and say he's moved when he hasn't moved, refuse to do the collecting, and live up to his responsibilities, then when I make him face his responsibilities and I give him the receipts and he goes out and he's collected three hundred dollars and only has a hundred and twenty dollars to show for it to pay his bill, that tells me that we've got a serious problem.

Tetrault further testified that, under the circumstances, when a contracted carrier is collecting and spending the money that is required to be submitted to pay the paper bill, it would have been negligent of her not to take the receipts from the carrier and collect them herself in order to prevent losses to the Respondent.

Tetrault told Rojas that if there were any additional profits after she had collected enough to pay the paper bill she would bring him the money. Tetrault collected all but \$10 of the amount needed to pay the paper bill, and contributed approximately \$10 of her own money in order to pay the paper bill and close this account. Tetrault testified that there were remaining receipts totalling \$42.50 that were uncollectible, but, assuming they were all collectible, Rojas would have been entitled to additional profit of \$42.50, from

which amount Rojas owed another carrier, Willie Sorrell, who substituted for Rojas during the last week of July, a total of about \$30. Tetrault testified that in this situation, since she took the receipts from Rojas, who could therefore no longer collect them, it was the Respondent's responsibility to see that both Rojas and Sorrell, as a substitute carrier, were paid. She turned over the remaining receipts to Barrington in about mid-October, and told him that he would have to see to it that Rojas and Sorrell were paid, since by this point in time Tetrault had been instructed not to have anything more to do with District 128.

Tetrault testified that she did not recall whether she had kept Resch apprised of this situation. The Respondent never questioned Tetrault prior to her discharge about the matter of Rojas not being paid his profits.

Rojas, who was 13 or 14 years of age while a carrier for the Respondent, testified in this proceeding. I credit Tetrault's account of the Rojas matter, and do not credit the testimony of Rojas that he had paid his paper bill. Nor do I credit any of his testimony to the extent that it may differ from that of Tetrault.

i. *Carrier Willie Sorrell*

The Respondent maintains that Tetrault recruited a carrier, *Willie Sorrell*, who delivered papers for a month and a half but was not paid by Tetrault for his services.

Tetrault testified that Sorrell, age 14, was a contracted carrier for the Tribune, the Respondent's evening newspaper, and had a district manager other than Tetrault. He palled around with two of Tetrault's carriers, Seth Rojas and Jeff Beckley. Sorrell simply liked to deliver papers and he would often accompany Rojas and Beckley on their routes, and help them, just for fun and with no expectation of being paid. Prior to Tetrault's vacation, Beckley had given Tetrault tentative notice that he would be giving up his route the first of August. Moreover, Rojas' tenure with the Respondent was tentative, as from time to time he would indicate to Tetrault that he, too, might be giving up his route. To prepare for these contingencies, Tetrault asked Sorrell, in the presence of Rojas and Beckley, whether he would substitute for them on their routes if they quit during Tetrault's absence and the substitute district manager, Harms, could not find replacements. Sorrell, who was well acquainted with the routes, said yes, he would. Tetrault explained the matter to Harms and introduced him to the three boys. There was no discussion regarding Sorrell's compensation in the event he delivered the routes.

On her return from vacation, Tetrault was advised by Barrington, who had left a note for her, that she was to drop off the papers for both routes at Sorrell's house, and then, after Sorrell folded and put rubber bands around the papers, she was to return and pick him up and take him around in the van to deliver the two routes. Barrington advised her that this is the procedure that was then being followed. Tetrault took Sorrell around in the van, and Sorrell would throw his newspapers from the passenger's seat and not from the cargo compartment of the van.

On one occasion, sometime in September, Sorrell told Tetrault that his father was harassing him because he didn't have any money to show for delivering. Tetrault gave him \$40 as partial payment for what he was owed, but because the collections had not been completed she was unable to as-

certain the total amount of his profits for delivering the routes. She told Barrington about this, and entered Sorrell's name and the profits to which he was entitled on the two route-profit breakdowns for August, which show that Sorrell was owed \$542.68 and \$37.09, respectively, as profits corresponding to the number of days he delivered the two routes during that month. Tetrault was never questioned by the Respondent about this matter, nor about profits which Sorrell was owed; as a result of delivering still another route in September, which route-profit breakdown was Barrington's responsibility. Nor was Tetrault questioned about an alleged violation of company policy which, apparently, the Respondent maintains Tetrault committed by permitting Sorrell to ride in and throw papers from the back of the van.

The Respondent maintains that Sorrell delivered papers for a month and a half and only received \$40, far less than the amount which he should have received. However, Sorrell testified that the month and a half period includes a period of time when he was helping Rojas deliver his route and didn't expect to get paid because he "like[d] doing things for my friend, so I decided to do it." Sorrell did not testify that he rode in or threw papers from the back of Tetrault's van. To the extent that Sorrell's testimony differs from that of Tetrault, I credit Tetrault.

j. *Carrier Thao Lam*

The Respondent apparently maintains that Tetrault failed to pay another carrier, *Thao Lam*, his profits, and that in fact Thao Lam should not have been allowed to even deliver papers as he was not contracted.

Tetrault testified that Thao Lam was a new carrier that Tetrault had been training at the time she went on vacation. Tetrault had filled out the contract for him but had not been able to get the contract signed, as this requires a joint meeting with the youth carrier and a parent or guardian, who may also incur some obligations. Tetrault left the contract for Harms, and in the extensive notes she left for Harms specifying the various things he was to do in her absence, Tetrault instructed him to get the contract signed. When Tetrault returned from vacation, she was advised that Harms had contracted Thao Lam but had not turned the contract in because Thao Lam had said that he did not want the route, and in fact Thao Lam was no longer delivering the route. Rather, it was being delivered by Richard Robinson. However, Harms had given Thao Lam the receipts to collect.

Tetrault met with Thao Lam and tried to make some sense of what he had collected and what customers had not paid, which proved to be difficult because of Thao Lam's disorganized recordkeeping. However, she did receive enough money from him to pay the paper bill. Tetrault told him he was going to have to do the best he could and try to collect the remainder of the receipts on his own, as Tetrault was too busy with her other duties to collect Thao Lam's profits for him. Tetrault testified that based on various uncollectible receipts and other information that Thao Lam gave her, she came to the conclusion that Thao Lam was able to collect more than the \$99.98 which, according to the applicable route-profit breakdown, was the amount of profit to which Thao Lam was entitled for delivering the route in July.

At no time prior to her discharge did the Respondent question Tetrault about this matter, or ask her why a noncontracted carrier was permitted to collect money from cus-

tomers. I credit Tetrault and find that, in fact, Harms, and not Tetrault, was responsible for giving the collection receipts to Thao Lam.

k. *Carrier Robert Eyler*

The Respondent maintains that Tetrault refused to allow a contracted carrier, *Robert Eyler*, to collect his route and/or misappropriated his collections to another route, thus depriving Eyler of his actual or potential profits.

The events involving Eyler occurred prior to Tetrault's vacation. Tetrault testified that on about May 13 Eyler, who was 13 years old, took over the route from another carrier, Gabrielle Masters. Masters had not paid her paper bill for April, which was due by May 11, and had continually been late with her paper bill payments in prior months. In the past, Tetrault had put her own personal money in for Masters in order to pay her paper bill on time, "because her mother [couldn't] find the time to go to the bank and supposedly get the collection money out to pay the bill on time." Tetrault told Barrington, who was handling District 128 on Tetrault's days off, that she was no longer willing to put her own money in to pay the bill, and that Barrington should tap Masters' bond to pay her paper bill and, in accordance with proper procedure when a carrier's bond is tapped, take her off route. Barrington did so.

Tetrault then hired Eyler to take over the route. Neither Eyler nor his family had the money for his bond deposit, and the money was loaned to Eyler through a company fund that had been established for such contingencies, with the understanding that the loan would be paid back from the carrier's profits.

Eyler had been contracted prior to May 17, the cutoff date for contracting carriers each month so that it would be reflected on the Respondent's records that Eyler was the contracted carrier of record retroactive to the first day of the month. He collected in June for the deliveries in May that had been made both by Eyler and Masters. Masters had delivered the papers for approximately half of May and was owed her profits for the days she delivered. Tetrault reviewed this with Eyler, and paid Masters the profits she was owed. Thus, the profits to which Eyler was entitled for May were diminished by the amount that Masters was owed, and further diminished by the large bond payment that Eyler owed to cover both his regular bond payment and the bond money that had been advanced to him. Additionally, Eyler had ordered a bike rack for his bicycle and a carrier bag. These items are customarily purchased from the Respondent and the costs for these items were deducted from his first month's profits. Tetrault reviewed the figures with Eyler, his mother, and his stepfather, Robert Bass, who was an adult carrier on another route, and, according to Tetrault, they seemed to understand the reason why Eyler's profits for his first month were minimal.

About the end of June, Tetrault took Eyler off route because Eyler had "dumped half of his papers on the roof of a lady's garage and didn't finish delivering his route." Tetrault got a ladder and retrieved all of the newspapers. The date on which this occurred could be verified by the "daily activity reports" which would reflect the date on which many customers complained that they had not received their

papers.¹¹ Moreover, Tetrault spoke to Resch about the matter.

Tetrault testified that her memory is vague regarding many of the details of the Eyler matter. She does not recall either taking Eyler's receipts from him, or collecting for him in July for the month of June. Further, she believes that Eyler did not voluntarily quit the route, but rather that she took him off route because he had thrown the papers on top of the lady's garage. She was not questioned about Eyler's complaints prior to her discharge. Rather, the Respondent accepted them at face value.

1. *Carrier Kofie Santiago*

The Respondent contacted another carrier, *Kofie Santiago*, who said he had not been paid his profits indicated on the route-profit breakdown.

Tetrault testified that Santiago was a new carrier whom she had hired prior to her vacation, but had not had time to contract. She instructed Harms to take care of this, and had prepared the contract for Santiago's signature.

When Tetrault returned from vacation she dropped the newspapers off at Santiago's home in the morning, and when she came back later to see if they had been picked up the papers were still there. She then discovered that Santiago had moved, and his house was empty. She delivered the route from memory, as she had no route list because Harms had given the route list to Santiago. Later that day she noted from prior cash turn-ins that Harms had made that Santiago had paid his paper bill for the month. About a week later, either Santiago or his mother called. They were living at a new address. They wanted Tetrault to come by and cash some checks and pick up some uncollected receipts. Tetrault testified that:

His mother said the reason she had made him quit was because when he went collecting the people were really rude to him, and one of the customers threatened him. And that he had such a difficult time collecting, that she didn't want him to have to deal with it. She said it's not fair that the kid should deliver the paper route and then the people are so rude and so ugly that when he goes to collect his money that he's earned, she said, I'm not going to have him do it.

Tetrault cashed some checks for him and took the uncollected receipts. Santiago's mother said that he had spent some of the money he had collected. Therefore, he had already retained some profits. Tetrault said that she would try to collect the remainder of the receipts for Santiago, and that although she could not guarantee that she would be any more successful than he had been, she would do what she could. Tetrault did collect some receipts and took the money to Santiago. She told him that she had a lot of other collecting to do, but that she would get to Santiago's receipts if and when she could. Thereafter, she returned the receipts to

Santiago as she did not have time to collect them; she believes he was able to collect some of them.

Later, she found out that in fact Harms had not submitted Santiago's contract prior to the contract deadline, and that the route was not in Santiago's name on Respondent's records. Therefore, she prepared a route-profit breakdown showing that Santiago delivered the route during all of July, and that his profits for delivering the route should have been \$87.69. She noted on the route-profit breakdown that "Vacation relief [Harms] contracted but did not turn in [the contract] because carrier did not have bond deposit. Then carrier quit because collecting was too hard."

Tetrault testified that she believes Santiago received at least the amount of profits to which he was entitled, and that if he had been asked to do so, Santiago would have signed the breakdown acknowledging that he had received his profits. This is one of the breakdowns that Kemp, on behalf of Tetrault, volunteered to get signed during the November 11 meeting as, under the circumstances, Tetrault did not see a problem in getting Santiago's signature. Prior to her discharge, however, Tetrault was not specifically questioned about the matter.

m. *Carrier Adesino Luke*

The Respondent maintains that Tetrault failed to pay *Adesino Luke* the profits to which he was entitled and also failed to pay him the gas money she had promised him.

Luke, in a statement taken from him by the Respondent, states that when he signed the contract on September 17, Tetrault told him he would receive \$300 per month profit for delivering the route, and that Tetrault would do the collecting and pay him the profits for September. Also, she told him that he would receive a monthly gas check in the amount of \$77. On October 18, he was given \$150 by Barrington, rather than the \$300 he had been promised, covering the time he worked in September. He quit the route on November 11, and did not receive any profits or gas money for the time he worked in November.

Tetrault testified that she was already collecting the route at the time she contracted Luke, and that she collected for Luke for September, even though he was the contracted carrier. Tetrault explained that on September 1 she had recently combined two bicycle routes into this single auto route; and on one of the prior bicycle routes the July and August collections had not been completed. Since there were so many collections still outstanding from previous months, it would have been very difficult for a new carrier to clean up the collections; further, the money would have been owed to prior carriers or to the Respondent. She did tell Luke she would pay him as soon as the collections were made. However, all the collections had not been made when her responsibility for District 128 ceased. Also, Tetrault believes that in fact either she or Barrington probably had given Luke some receipts to collect, because she and Barrington were "getting buried on the collections." Tetrault testified that since she was collecting the route, Luke could not be held responsible in the event she was unable to collect sufficient funds to cover the paper bill or the profits.

Tetrault testified that she and Barrington did an estimated route-profit breakdown in order to calculate how much Luke should receive when the collections were finished. Barrington took some money to him, but Tetrault does not recall wheth-

¹¹ It is interesting to note that, when, at the hearing, Tetrault stated that these documents would be in the Respondent's possession, Respondent's attorney stated, "If they still exist, your Honor. We're talking two years ago. This is the first time we've heard of this." Similarly, at the hearing in this matter, Tetrault was first advised by the Respondent that she had been discharged because of events, complex in nature, that had occurred 2 years before.

er it was a lesser amount than his profits for September should have been. Tetrault does not recall guaranteeing Luke a profit of any particular amount. Customarily, profits vary from month to month, and her usual practice is to explain to new carriers the approximate monthly amount they may expect to make on the route, but to also tell them that the actual amount of their profits is dependent upon several variables, including the number of customers on the route, whether or not those customers take the paper for the entire month, and whether the customers pay what they owe.

Tetrault did tell Luke that he would be receiving a gas allowance, but explained to him that she did not know what the amount would be. Tetrault testified that the Respondent had recently instituted a new gas allowance procedure, and the amount differed from route to route and depended on several variables. The division manager was to determine the amount based on some formula. Further, the amount of the gas allowance would have been reflected on a separate check issued by the Respondent, which would have gone directly to the carrier and, to Tetrault's knowledge, would not be forwarded by the district manager. Tetrault had no prior experience with the new gas allowance procedure, and "never sat down with my supervisor and had been told how to fill out for a gas allowance on an auto route under the new system. I did not know how to do it."

The Respondent did not question Tetrault about the Luke matter prior to her discharge. Nor did the Respondent introduce evidence rebutting Tetrault's testimony regarding her lack of familiarity with the new gas allowance procedure.

n. *Carrier George Lopez*

The Respondent maintains that Tetrault did not contract *George Lopez*, yet allowed him to deliver papers for an extended period of time and did not pay him the profits to which he was entitled.

Lopez succeeded Da Le. At the time Lopez took over, Tetrault had made the route into a combined auto route. Lopez was not contracted. Tetrault and Barrington were collecting his route. Lopez was not proficient in English, and Tetrault spoke to him through his son as a translator. Tetrault figured out in advance what the approximate profits for the month should have been, and told Lopez that he would receive approximately \$3 per customer per month, but that this was an estimate and that the actual amount depended on how many customers would pay their bills, and other deductions for expenses. She told him he would get paid after she had made the collections, and that she was going to try to get all the collections cleaned up so that the first month he collected would be with a clean slate. Tetrault testified that, "The collections on the 16 route were a very confusing mess. And I was afraid that if I let him go out there into the mess that he would quit just out of sheer frustration." She also told him that he would be receiving a gas allowance. The prior carrier on the route, Da Le, had not paid his paper bill and some of the money Tetrault collected would be for Da Le's paper bill for the preceding month.

The reason Lopez was not contracted was because he worked an odd shift on another job, and there was never a time when Tetrault could meet both with Lopez and his son, who was going to school and who would have to be present to interpret. Contracting a carrier was a time consuming procedure. Thus, Tetrault would spend several hours with the

carrier reading the contract word for word and explaining the obligations, procedures, and responsibilities so that the carrier would understand his or her commitments; and she would also collect the bond money at this time. She had scheduled several meetings with Lopez and his son, but they were never able to meet as scheduled.

Barrington told Tetrault that Lopez was going to quit the route unless he was paid some money even though the paper bills had just come out and had not yet been collected. Thus, according to Tetrault, even if Lopez had been collecting for himself he would not have received any profits yet, because the paper bill would have to be paid first. Tetrault and Barrington figured out what Lopez' approximate profit would be, and Barrington gave him part of that money out of the collections.

Tetrault testified that when she left District 128, Lopez had not been paid all he was owed because the collections had not been completed. She doesn't know whether he was paid gas money for August or September, he believes \$100 was put into an envelope for Lopez, and that Barrington had Lopez sign a receipt for it.

On one of three route-profit breakdowns submitted by Tetrault, she noted that Lopez was due \$101.42 as profits for August. The route-profit breakdown, in the space provided for the amount of the carrier's profits, shows an erasure mark, over which the \$101.42 was written. Barrington had taken the route-profit breakdown, prepared by Tetrault, to Lopez' wife, Teresa Lopez, for her signature. Teresa Lopez testified that when she signed the route-profit breakdown "it was for 80 dollars, not for 101." Also, Barrington, who testified that because of all that was going on at the time he could not be certain of the amount he gave Teresa Lopez, believes that the amount was \$80. This allegedly caused the Respondent to believe that Tetrault had originally prepared the route-profit breakdown showing that Lopez was owed \$80, that she had Barrington pay this amount to Lopez and obtain a signature showing that it had been received, and that she then altered the document by erasing the \$101.42 and inserting \$80, and pocketed the difference, namely \$21.42.

Thus, throughout this proceeding the Respondent's position was that Tetrault had stolen \$21.42. There was considerable record evidence on this point. However, as noted above, the Respondent, in a footnote in its brief, states that "There was major discussion on the record whether misappropriation meant stealing. For purposes of this matter, misappropriation refers to misapplying funds and not to conversion for personal gain."

Tetrault testified that there is no way that you can fill in a route-profit breakdown by starting with a profit, which is the final figure to be calculated, and then working your way backward to the starting figure. Thus, Tetrault testified that if the starting figure for the total amount of collections, with the attached adding machine tape showing the amount of the receipts, is incorrect no other figure on the route-profit breakdown will be correct. In other words, the accuracy of a calculation is dependent upon the number preceding it on the route-profit breakdown. As Tetrault testified, "You have to start with the right number to get to the one below." Tetrault has always submitted all her route-profit breakdowns either in erasable pen or in pencil so that mistakes may be corrected. There is no indication that each entry on the route-profit breakdown in question was erased and some other

entry inserted, which would have to be the case if Tetrault had altered the amount of Lopez' profits after Teresa Lopez had signed for the money.

I credit Tetrault and find that she did not alter the document. I find that Barrington and Teresa Lopez are mistaken regarding the amount that Teresa Lopez signed for and was given by Barrington, as Barrington was admittedly uncertain about this matter, and that Lopez received several other payments from Barrington and may have been confused about what had transpired. Further, the Respondent has modified its position, and is no longer accusing Tetrault of stealing anything.

The Respondent did not question Tetrault about this payment to Lopez prior to her discharge or ask her whether Lopez had been paid, or indicate that there was any problem with the various payments to him. Indeed, had the Respondent questioned Tetrault about this, she would have advised the Respondent that, for the reasons set forth above, it would have been impossible to alter any particular figure on a route-profit breakdown without having to change every other figure. This, of course, was obvious to the Respondent also, and it is an example of the Respondent's eagerness to seize upon and credit at face value any information detrimental to Tetrault, without providing Tetrault with the opportunity to prove that the Respondent's information was either clearly erroneous or required further investigation.

o. Carriers Robbin and Christy Korcha

Following Tetrault's termination, the Respondent maintains that it learned of additional instances of misconduct, namely, failing and refusing to pay carriers the amounts she had promised them.

Apparently in December, after Tetrault's discharge, the Respondent learned that Tetrault promised to pay two carriers, *Robbin* and *Christy Korcha*, an amount of about \$50 for delivering papers as substitutes during 5 days in June 1988, after they had resigned from their regular routes.

Tetrault testified that she recalls the Korchas substituting on a route prior to June, and that she paid them for their services, but she does not recall that they substituted following their resignations from their regular routes, or that she agreed to pay them additional money for this.

Obviously Tetrault was not questioned about this prior to her discharge, as the Respondent did not learn of it until later.

p. Carrier Eric Moore

Similarly, the Respondent allegedly learned after Tetrault's discharge that she did not pay *Eric Moore* the money she had promised to pay him. Moore, age 14, testified in this proceeding, and believes that he was owed some money at the time he quit after delivering for 2 months. Moore testified that his mother made him quit because "she [Tetrault] was going to fire me and—you know—I ended up quitting because there's no way I could get paid."

Moore's mother, Marilyn Adesanwo, engaged in a rambling discourse about her experiences with her son's paper route, in which she actively participated, and maintains that she was fearful of permitting her son to make the collections, and that she believed that not only Tetrault, but a boy by the name of Tony, whom her son apparently hired as a substitute

carrier, was "trying to rip us off." Adesanwo testified that "at the beginning when Eric was approached by her [Tetrault] I let her know that I didn't appreciate the way she approached him in the alley because I felt he was accosted to work . . . because of the neighborhood that we lived in, I objected quite a bit, but she promised me that she would provide my kid protection." Adesanwo accused Tetrault of calling her son names and telling her that Eric was stupid and incompetent and that "the the neighbors said that my child was staring at trees while he was going down the street at 6:00 o'clock in the morning."

Tetrault testified that in fact Adesanwo did accuse her of "accosting" her son in the alley about a job. Tetrault explained that she approached Moore and asked him if wanted to be a paper carrier when he was putting out the garbage in the alley behind his house. However, according to Tetrault, "it wasn't some dark dingy, dead-end thing. It was as wide as the main street itself. That's where the people's garages were. There were actually addresses on the alley where people's front doors were on the alley." In fact, Tetrault happened to be in the alley because she was looking for the address of a new customer. Tetrault told Adesanwo that she was sorry that Adesanwo was offended by the manner in which she approached her son. After further conversation, Adesanwo encouraged her son to take the job, and thought it would be good for him. Tetrault would not contract a youth carrier without the permission of a parent or guardian.

A contract was signed several days later. She explained to Moore and his stepfather the procedures and details of the work and, regarding the amount of money Moore could expect to make, Tetrault said that the rate of profit established for that particular route was \$2.50 per customer per month, but that the actual profit would be calculated as follows:

Now, that's going to vary depending on the number of people who take the paper for the entire month, and then you have to deduct from that your expenses, your bond, your insurance, your supplies and any other thing, any chargeables you may put on your paper bill. That's deducted and the bottom line is what your profit was.

Tetrault testified that there was never a time when Moore told her that he could not collect certain receipts. Nor did she tell him she would pay him for the receipts he could not collect.

One day a customer on Moore's route called Tetrault and wanted to see her. The customer explained to Tetrault that she was concerned about Moore, as she observed him standing with his bike in the middle of the street, looking up at the sky for a least a full 5 minutes; additionally, she advised Tetrault that she had been sitting there with her coffee waiting for her morning paper. Tetrault said she would talk to Moore's mother about it.

Tetrault testified that she very delicately brought up the subject to Adesanwo, and requested that she not take offense. She then related what the customer had said. Adesanwo seemed upset, but not surprised, and said that she was aware that Eric had a concentration problem and that it was something that his school teachers had discussed with her. Tetrault testified that she never called Moore stupid or incompetent.

When Tetrault later told Adesanwo that Tetrault was going to have to take her son off route because of numerous complaints about late deliveries and because of his inability to handle the collections properly, Adesanwo said, "I've already done that for you. He won't get up on time. I fired him for you."

I credit Tetrault and find that the allegations concerning her dealing with Moore and Adesanwo are without merit.

q. Longstanding company policies and procedures

1. Submitting personal checks on cash turn-ins

The Respondent also maintains that Tetrault violated longstanding company policies and procedures.

The Respondent has a policy against submitting personal checks to pay paper bills. The record shows that this policy was instituted because in the past certain district managers had taken large amounts of cash out of the turn-ins, and had substituted their personal checks, which subsequently "bounced." According to Kemp, the policy memo prohibiting the use of personal checks was never enforced against district managers who used their personal checks to substitute for coins collected from customers, thus making the turn-ins easier to handle; or for making up a small balance on a carrier's paper bill so that the district manager could receive his or her monthly bonus for paying all the paper bills prior to the 11th of each month; or to keep carriers on route, as carriers who did not pay their paper bills by the 11th of the month were required to be taken off route. According to Kemp, the policy was designed not to preclude the foregoing conduct, but rather to prohibit the taking of cash for personal use and replacing it with a check. Kemp testified that the largest personal check he would submit in a cash turn-in would be no larger than the monthly collection bonus to which he was entitled, which would have been about \$60. On one occasion, when Kemp substituted a personal check, his supervisor told him to be careful because he would have a problem if the check bounced.

District Manager Ronald Chouinard, who has been a district manager for 30 years, testified that it was a very common policy to write a personal check in order to get a collection bonus. However, he said it would be improper to use a personal check to pay off a carrier's entire paper bill of, perhaps, \$200.

Michelle Davis, a vacation relief district manager, employed by the Respondent for 10 years, testified that she would submit personal checks for the benefit of the regular district manager for whom she was substituting, as follows:

It would be if we [were] coming up close to the deadline and a carrier didn't have enough money to pay his or her bill, and I didn't want the carrier to lose his route or I didn't want the District manager to lose his or her bonus, I would put a personal check in to make sure that the bill was paid. The carrier would stay on route and the District Manager would get the bonus.

Davis said that she has written personal checks in the amount of \$100 or less and that this occurs some five or six times a year. On one occasion she told her division manager that she was going to put a personal check in for the benefit of the district manager. The division manager said, "They

frown on that," but then said okay when Davis assured him that the check would not bounce.

Two district managers, Catherine Proffetta and Dennis Borgerie, would not put personal checks into a collection, but rather would use cash for this purpose. In the case of Proffetta, she used cash because she did not have a checking account.

Several division managers, testifying on behalf of the Respondent, said that the use of personal checks by district managers under their supervision either was not common practice, or that they were not aware that the district managers were engaging in this practice, or that they would not condone, and would possibly discipline, a district manager for such an infraction of the rule. None of these division managers, however, provided an explanation for the rationale underlying the rule.

The record shows that Tetrault had submitted two checks in the amount of \$159 and \$75 in collection turn-ins. Tetrault did not recall the specific reasons for submitting these checks, but testified that generally she would submit personal checks to pay carriers' paper bills so that she would not have to take them off route, and that sometimes, when there was no contracted carrier and she was collecting the route, she "would just pay the bill to get Don [Resch] off my back and take the chance of getting my money out of the customers at some later point." She would tell Resch that she was doing this and, according to Tetrault, Resch would observe her writing the checks. Resch did not prohibit her from submitting personal checks, and would simply say that he hated to see her putting in her own money.

Tetrault testified that she understood the policy against submitting personal checks to prohibit the removal of cash from turn-ins and substitute personal checks, but not to simply add personal checks to the turn-ins in order to supplement the collections. Tetrault testified that, particularly in July, August, and September, she was trying to get out from under all the unfinished work and the only way she could do that was to clear the balances. She just wanted to get the particular routes paid off, and "at that point I would have taken my chances on ever getting my money back, just to get it [done] and over with." She further stated that "since I had been doing it openly for so many years, and telling people that I had been doing it, and no one had ever said, 'You can't do that,' I didn't think anything about it."

I credit Tetrault, as well as Kemp, Chouinard, Borgerie, and Davis, regarding their understanding of the policy against submitting personal checks. It is clear that although various district managers had varying interpretations of the policy and established their own individual guidelines, the general practice of submitting personal checks was widespread. Further, I find that Resch was aware of Tetrault's practice of submitting personal checks for various reasons, and that he implicitly authorized it by his acquiescence. Finally, it is clear that the Respondent was aware that Tetrault had submitted personal checks but did not question her about this prior to her discharge.

On the basis of the foregoing, I find that, contrary to the assertions of the Respondent, Tetrault engaged in no misconduct by submitting personal checks under the circumstances described above.

2. Permitting uncontracted carriers from delivering and/or riding in company vans

Regarding the Respondent's policy prohibiting uncontracted carriers from delivering newspapers and/or riding in company vans, various district managers testified that there were many exceptions to this rule.

Kemp testified that prior to contracting it was necessary to show the prospective carrier the route which he or she would be delivering, and that it was customary to take the carrier around in the company van. All district managers engaged in this practice, and at least half the carriers in his district started delivering papers before they were contracted. Kemp interpreted the rule to mean that a district manager should not permit an uncontracted carrier to deliver unless there was an intent to sign the person up as a carrier. In 1987 Kemp, apparently in his position of the Guild's executive officer, had a discussion with Training Supervisor John Kiernan about this and other rules, and suggested that some of the rules needed to be rewritten because it didn't make sense to have a rule that was not enforced. Kiernan said that he understood what Kemp was suggesting, but stated, in effect, that it was hard to rewrite an old rule.

District Manager Chouinard testified that the district manager would take the prospective carrier around in the van so that the carrier could "see the route and know where it's at and see whether he wanted it or not. He wasn't ready to sign a contract. You had to show him where the route was, what it consisted of."

District Manager Proffetta testified that she would train a prospective carrier by taking him or her around in the van for 4 or 5 days and she would not contract the carrier until the carrier was on his own and Proffetta was sure that he was capable of handling the job.

Vacation Relief District Manager Davis testified that it is customary to begin training a new carrier before going through the trouble of signing him up, in order to determine whether the individual is capable of reading addresses and performing the job. The prospective carrier is permitted to deliver papers prior to being contracted. At one point, Davis asked a supervisor, some Delivery Manager Bill Boyd, why the policies prohibiting such practices were posted on the bulletin board when they couldn't possibly be followed. Boyd just replied that he didn't put the memos on the board and couldn't take them down.

I find, based on the credited testimony set forth above, that the accepted company practice was to permit uncontracted carriers to ride in district managers' vans in order to acquaint them with the route and to determine whether they wanted, and could handle, the route. Further, I find that it was the accepted company practice to permit, for the same reasons, uncontracted carriers to deliver routes provided that the district manager had the intent to contract the carrier. While it is clear that the district managers understood that they were to contract the carrier as soon as practicable, the testimony of the aforementioned district managers shows that sometimes a carrier would deliver for more than 30 days before he or she was contracted.

In the case of George Lopez, *supra*, who remained uncontracted by Tetrault for several months, this inordinate delay was caused by unusual circumstances explained fully by Tetrault, namely, the fact that Lopez did not speak English and his son was therefore needed as an interpreter,

coupled with the added complication that Lopez' primary job, and his son's school schedule were incompatible. Nevertheless, I find that during the period of time Lopez was delivering, Tetrault clearly had the intention of contracting him, and in fact had set up meetings to do so. Further, the Respondent did not question Tetrault regarding this matter or provide her with the opportunity to explain this situation prior to her discharge.

3. Prohibiting uncontracted carriers from collecting

Regarding the Respondent's policy of prohibiting a district manager from permitting uncontracted carriers to collect, the record shows that this rule is designed to insure that the carrier will be less likely to take money belonging to the Respondent since, in this event, the carrier's bond may be tapped to recover the amount of the monthly paper bill.

In several instances technically uncontracted District 128 carriers were given receipts to collect. However, the record shows that in these instances it was Harms, and not Tetrault, who had failed to contract the carrier, and that Tetrault was not aware of this prior to the carrier being given receipts to collect.

A corollary of the foregoing rule is that the district manager is not to collect for a contracted carrier, because, as independent contractors, the carriers technically own the rights to the collections, from which collections they are to retain their profits.

However, there are many exceptions to this rule. Thus, if the contracted carrier "dumped" his or her route during or prior to the collection period, the district manager would be responsible for making the collections. Similarly, if the carrier was taken off route because of excessive complaints or misconduct, the district manager would have to collect the route. Moreover, as in certain foregoing instances involving carriers on District 128, if the district manager had reason to suspect that the contracted carrier was likely to abscond with the collection money that was owed to the Respondent, as in the case, for example, of Robert Bible, the district manager could collect for the carrier. And, in the event that a new carrier was hired for a route with prior outstanding collections to be made which included profits to which former carriers may have been entitled, the district manager would initially collect the route.

I find that Tetrault's handling of such instances was mandated by the exigencies of the situation; that Tetrault had apprised Resch of the compelling reasons therefor, as detailed above; that Resch was aware that Tetrault was collecting for contracted carriers; and that he permitted her to do so.

Analysis and Conclusions

During the course of this lengthy hearing Nancy Tetrault testified for many days. Her testimony covers well over 1000 pages of transcript. Since the time she was discharged, and throughout this proceeding, she has been directly accused by the Respondent of stealing money, in addition to a myriad of other lesser acts of misconduct. Throughout the hearing she was subjected to intensive and extensive cross-examination regarding complex details of her work as a district manager. Having had the opportunity to carefully observe her demeanor, and to evaluate her testimony in light of all the record evidence, I am convinced that Nancy Tetrault is an

eminently credible individual, with a remarkably detailed and accurate recollection of most of the events in question, and I credit her testimony in its entirety. To the extent that Tetrault may not have remembered or perhaps inaccurately recollected certain details of some events, she forthrightly so testified; given the length of her testimony, the convoluted events surrounding many of the alleged instances of misconduct and the protracted period of time since the events in question occurred, this is entirely understandable. Conversely, I do not credit the testimony of any of the witnesses who testified on behalf of the Respondent to the extent that such testimony materially conflicts with that of Tetrault.

Not only do I conclude that Tetrault did not steal money from the Respondent or engage in any lesser type of misconduct or behavior which would warrant her suspension or discharge, but I further find, contrary to the assertions of the Respondent, that the Respondent had no good-faith belief that Tetrault had engaged in any such acts. Tetrault had enjoyed 10 years of employment with the Respondent during which time she performed her work in at least an acceptable manner, handled virtually hundreds of thousands of dollars worth of checks and cash without being suspected of dishonesty, and hired, trained, and paid a large numbers of carriers. Insofar as the record evidence shows, the Respondent received no complaints from any of the carriers whom Tetrault had hired over the years, prior to the events.

The record evidence shows, and I find, that Tetrault was a highly conscientious individual, who was concerned about the declining state of her district, which, because of its transient population and high crime rate, was one of the most difficult districts in the San Diego area to manage. This concern, coupled with the fact that she had received a critical performance evaluation from her immediate supervisor, Division Manager Don Resch, caused her to resign from the Guild's bargaining committee because the time she spent in bargaining negotiations and related Guild matters admittedly detracted from her management of the district, and she understood that her first priority was to properly manage her district.

A combination of factors, including the socioeconomic profile of the district, the amount of work that needed to be completed after Tetrault began her month long vacation, and the fact that the Respondent replaced Tetrault with a vacation relief district manager, Harms, who was unqualified to be placed in charge of such a volatile district, contributed to an even further decline of the district and compounded the problems that had previously existed prior to her vacation.

The record evidence shows that upon her return from vacation, Tetrault kept Resch apprised of the difficulties she was encountering and of her methods of dealing with them. Nevertheless, on September 22 Resch gave Tetrault another critical evaluation, which included a 1-day disciplinary suspension. Within minutes thereafter, however, Tetrault was advised that she was receiving "something good." She was then told that she was being transferred to another district and that, commencing on October 1 she would become district manager for District 122, a position for which Tetrault had earlier applied.

The complaint does not allege, and the General Counsel does not maintain, that the critical performance evaluation of Tetrault or her 1-day suspension was discriminatorily motivated. The Respondent maintains that the transfer of Tetrault

to District 128 was for the purpose of attempting to "rehabilitate" Tetrault. Apparently, the General Counsel does not take issue with this, and maintains that the Respondent's attempt to devise a way of ridding itself of Tetrault commenced at some point after September 22 and before the *Weingarten* meeting on October 28, 1988.

I have previously credited Tetrault's testimony regarding her conversation with Redd about Respondent's rationale for the transfer. I find that Redd verified as being "essentially correct" Tetrault's comments that:

The story I hear is that Rich [Julian] wanted to fire me as soon as I came back from vacation . . . and that he was told that he could not fire an employee who had a good work record previously, who had already been repeatedly requesting transfer off the district . . . and that he couldn't fire somebody for what something [sic] that happened when they weren't even there. And he was told that he couldn't fire me.

It was not until the hearing in this matter that Tetrault was specifically advised of the reasons for her November 1 suspension and November 17 discharge. Thus, not only was Tetrault not so advised during the October 28 *Weingarten* meeting, or the subsequent November 11 meeting, but moreover, even the January 13, 1989 letter listing some 82 allegations against her was not sufficiently specific to put her on notice of the alleged misconduct which warranted her discharge. There is no doubt, and I specifically find, that Tetrault was not given a reasonable opportunity to convince the Respondent that she did not engage in any so-called act of dishonesty, impropriety, misconduct, failure to adhere to various company rules, and regulations, or any other dischargeable offenses, because neither she nor the Guild was apprised of what the Respondent had in mind. Had Tetrault been timely and specifically advised of the Respondent's contentions, and had she been provided with the documents that both she and the Guild continually requested throughout the investigation, it is likely that her answers to the allegations would have made as much good sense to the Respondent as they did to me. But the Respondent, I find, was not interested in "good sense." It was interested in ridding itself of Tetrault.

The credible record evidence does not support the Respondent's assertions that, even though it may have been incorrect in its analysis of Tetrault's misconduct, nevertheless it had a good-faith belief that such misconduct did, in fact, occur, and that therefore Tetrault's discharge was not discriminatorily motivated. To the contrary, the credible record evidence demonstrates the Respondent's total lack of good faith.

Thus, the Respondent maintains that what initially aroused its suspicions, and triggered its subsequent investigation, was the matter of the unsigned route-profit breakdowns. The fact that they were unsigned by the named carriers admittedly indicated, according to the Respondent, a "problem" with the payments to the carriers. Thereupon, the Respondent contacted the carriers and found out they had not been paid their profits. Certainly, to falsely represent that monies had been paid to carriers warrants the inference that Tetrault had embezzled the money, and is clearly a dischargeable offense. Yet at no time thereafter did the Respondent specifically ask

Tetrault the obvious and straightforward question, "Did you pay these particular carriers their profits?" An affirmative answer to this question would not only have warranted Tetrault's immediate discharge, it would also have put an end to the investigation and saved Adams the trouble of compiling a 300-page notebook, complete with graphs and charts, tracking Tetrault's alleged 82 acts of malfeasance.

The reason the posited question was never asked, I find, is because the Respondent already knew the answer Tetrault would give, namely, that the carriers' profits reflected in the unsigned route-profit breakdowns were the amounts that the carriers were entitled to but had not yet necessarily received, and further, that prior to turning in the route-profit breakdowns she had advised Redd that the carriers had not necessarily been paid. Such an answer would have absolved her of any wrongdoing or suspicion of wrongdoing.

It is abundantly clear, and I find, that during the investigation, and particularly during the October 23 and November 11 meetings, the Respondent did not ask Tetrault the foregoing question or any other specific question which directly related to any allegation of misconduct alleged in the subsequent January 13, 1989 letter. In its brief, the Respondent stated that, "While these two meetings may not have been the most adroitly conducted meetings, they were conducted according to Respondent's normal practices," and Adams testified that that was simply the way company investigations were customarily conducted. I do not credit her testimony, and, as noted above, I have previously found that during the course of *Weingarten*-type meetings the Respondent directly confronts employees with the offenses they are suspected of committing, and permits them to respond to specific allegations. Throughout the investigation of Tetrault the Respondent did not do this. It did not specifically question her regarding the matters it subsequently relied on to support its decision, it refused to provide her with requested information so that she could account for money and other matters, and it solicited and credited, at face value, information detrimental to Tetrault, including information from individuals whom it had reason to believe were of questionable veracity.

To deny Tetrault, a longtime employee who has been entrusted with the handling of considerable sums of money over many years and who has never been suspected of theft, the opportunity of demonstrating that in fact the Employer's alleged suspicions are without substance, supports the conclusion that the Respondent's assigned reasons for discharge are pretextual, and is indicative of discriminatory motivation. *Syncro Corp.*, 234 NLRB 550, 551 (1978); *Delta Gas, Inc.*, 282 NLRB 1315, 1317 (1987); *Clinton Food 4 Less*, 288 NLRB 597, 598 (1988); *Pierre's Vending Co.*, 274 NLRB 1219 fn. 2 (1985); *Burger King Corp.*, 279 NLRB 227, 228-229 (1986).

It must be emphasized that the Respondent is a large employer and maintains a sophisticated employee relations department staffed by professional personnel, such as Adams, who are trained to conduct investigations and otherwise deal with employees and the various labor organizations which represent them. It is clear that the extensive investigation of Tetrault was not only directed and managed by the employee relations department, but that the same Respondent's attorneys who were then engaged in collective-bargaining negotiations with the Guild were also involved in the process of drafting letters regarding Tetrault's discharge and had even

attended the seminal meeting at which Adams made an elaborate presentation to various company representatives and the decision to discharge Tetrault was made.

The Respondent was well aware of Tetrault's union activities, including her significant role, quoted above, in the aforementioned video which had been viewed by various management representatives at a management meeting. Indeed, Adams testified that she "felt the case had potential political overtones and that we needed to proceed cautiously." Adams, asked to explain what she meant by "political overtones" stated, "Well, I've been around for a while and I knew Nancy was on the bargaining committee. I knew there'd be a lot of noise. I just had a gut feeling about it. You know those things."

In summary, I conclude that the Respondent's investigation of Tetrault was unfair, biased, and incomplete, and may reasonably be characterized as an inquisition rather than an objective attempt to discover the truth. Given the foregoing expertise of the Respondent in personnel and labor relations matters, together with abundant record evidence demonstrating that the Respondent's agents were capable of crafting concise, pointed, and specifically worded affidavits, critical of Tetrault, for carriers' signatures, it is reasonable to conclude that the Respondent's designated agents were also capable of articulating pointed questions about specific matters to Tetrault. By its failure to do so, the Respondent has demonstrated that its intent was to obfuscate rather than to clarify, and that its investigation was contrived to preclude both Tetrault, and the Guild on her behalf, from presenting exculpatory information. I so find.

The Respondent maintains in its brief that it has enjoyed "over forty years of harmonious relations" with the Guild. The record demonstrates that whatever the parties' prior relationship it has drastically deteriorated commencing with the beginning of negotiations for a new collective-bargaining agreement. At the time of Tetrault's discharge, bargaining negotiations had been going on for an extended period of time with no progress having been made. The Respondent had hired a different law firm to represent it in negotiations, and the Respondent was adamant that its regressive contract proposals be accepted by the Guild. Extensive correspondence between the parties reflected total mutual distrust. Charges had been filed with the Board alleging that the Respondent was engaged in bad-faith bargaining with no intent to reach an agreement. And the Guild, in Kemp's words, was at the point of accepting the economic collapse of the Respondent, in the event of a strike, to be a more favorable alternative than capitulation to the regressive terms and conditions of the contract the Respondent was then proposing. While the record contains no overt antiunion statements by representatives of the Respondent, the relationship between the parties was clearly at a 40-year low point, as may be readily discerned from the synopsis of the video, supra, in which Tetrault addressed the Guild membership and delivered a vitriolic speech chastising the Respondent and its "carpetbagging law firm."

I am convinced that the Respondent seized on an opportunity to rid itself of an ardent union activist who, because of the progressive decline of her district, was a vulnerable target. Tetrault had already been "disciplined" for her performance as district manager of District 128. The discipline consisted of an unfavorable evaluation, a 1-day suspension,

and a transfer to another district, which transfer she had previously requested. As noted above, Resch testified that the reason for the transfer was because:

I felt that [Tetrault] was on District 104 at one time and she did half way decent out there. . . . She put in for [District] 128 and she definitely was not managing that one effectively, but I felt she'd been here a long time and I thought, well, maybe I could give her the opportunity to show whether she could manage, period, or not, by giving her something that maybe was cleaned up let her get a fresh start. That was my reasoning.

However, it is clear that Tetrault not only was not given the opportunity to "get a fresh start," but that her workload was significantly increased as a result of having to simultaneously work two districts.

Thereafter the Respondent attempted to uncover improprieties associated with her management of District 128 and discharged her for numerous alleged acts of misconduct, in which she had not engaged, without specifying to her what those acts were and without providing her with a reasonable opportunity to refute the allegations against her. In the absence of any plausible and lawful reason for dealing with Tetrault as it did, the record herein mandates the conclusion that the Respondent discharged Nancy Tetrault because of her activity on behalf of the Guild. Such conduct is violative of Section 8(a)(3) and (1) of the Act as alleged. I so find.

CONCLUSIONS OF LAW

1. Union Tribune Publishing Co. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. San Diego Newspaper Guild, Local No. 95, the Newspaper Guild, AFL-CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. By suspending and thereafter discharging District Manager Nancy Tetrault because of her activity on behalf of the Guild, the Respondent has violated Section 8(a)(3) and (1) of the Act as alleged.

THE REMEDY

Having found that the Respondent has unlawfully discharged employee Nancy Tetrault in violation of the Act, the Respondent shall be ordered to cease and desist from engaging in such conduct, and to offer Nancy Tetrault reinstatement to her former position of employment as district manager of District 122, without loss of seniority or any other rights or privileges, and to make her whole for any loss of earnings and other benefits resulting from her unlawful discharge.

Backpay is to be computed in accordance with the Board's decision in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest on such backpay to be computed in accordance with the Board's decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be required to expunge from its files any reference to the suspension and discharge of Tetrault and to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

ORDER

The Respondent, Union-Tribune Publishing Co., San Diego, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending and discharging employees because of their activity on behalf of San Diego Newspaper Guild, Local No. 95, the Newspaper Guild, AFL-CIO, CLC.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Nancy Tetrault immediate and full reinstatement to her former position of district manager of District 122 without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of her unlawful discharge, in the manner set forth in the remedy section of this decision.

(b) Expunge from its files any reference to the suspension and discharge of Tetrault.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to enable the Board or its agents to compute the amount of backpay and the benefits due under the terms of this Order.

(d) Post at its San Diego, California facilities copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of the issuance of this Order what steps the Respondent has taken to comply.

¹² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."